



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	07.09.2021
DELIVERED ON	17.09.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) .No.279 of 2020

and

C.M.P. (MD)No.1642 of 2020

Sahila Krishnan

...Petitioner/Petitioner/Appellant

Vs.

1.M.Nazer

2.M.Raman

3.The Nagercoil Municipality,
Represented by its Commissioner,
Nagercoil Municipality, Nagercoil,
Agastheeswaram Taluk,
Kanyakumari District.

4.The Tamil Nadu Government,
Represented by the District Collector,
Kanyakumari District.
Having office at Collectorate, Nagercoil,
Agastheeswaram Taluk,
Kanyakumari District.

5.Thankaraj

...Respondents/Respondents/Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to direct the learned Principal Subordinate Judge, Nagercoil, to take the petition filed by the petitioner in Unnumbered I.A. (Court Fee)No.1474 of 2020 in A.S.No.21 of 2019 on the file of the learned Principal Subordinate Judge, Nagercoil, Kanyakumari District and pass orders on the said petition in accordance with law.

For Petitioner : Mr.M.Suri

For R-1 : Mr.M.P.Senthil

For R-3 & R-4 : Mr.A.Baskaran
Government Advocate



O R D E R

This petitioner/petitioner/appellant/1st defendant has filed this Civil Revision Petition seeking direction to the learned Principal Subordinate Judge, Nagercoil, to take the petition filed by the petitioner in Unnumbered I.A. (Court Fee)No.1474 of 2020 in A.S.No.21 of 2019 on the file of the learned Principal Subordinate Judge, Nagercoil, Kanyakumari District and pass orders on the said petition in accordance with law.

2. The petitioner/appellant had filed an appeal in A.S.No.21 of 2019 against the Judgment and decree, dated 23.09.2019 in O.S.No.85 of 2012, passed by the learned Principal District Munsif, Nagercoil. During the pendency of the aforesaid appeal, he has filed a petition in A.S.No.21 of 2019 to permit him to produce additional evidence by way of examining one P.Samraj, Taluk Sub-Inspector of Survey, Taluk Office, Agastheeswaram.

3.The learned Subordinate Judge, Nagercoil, returned the I.A., before numbering the petition and stated as follows:

"No acceptable reason is stated for non-examining the witness in the Trial Court. As per Order 41 Rule 27(aa) of C.P.C., the parties to an appeal shall not be entitled to produce additional evidence, oral or documentary, witness by the party seeking to produce additional evidence, oral or documentary, witness by the party seeking to produce additional evidence established that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after exercised of due diligence, be produced by him at the time when the decree appealed against was passed. As such this petition is not maintainable without such reason. Hence, returned. "

4.The petitioner/appellant has not taken any steps to examine the surveyor, on the other hand, advocate commissioner was examined on the side of the plaintiff. Ex.C.1/report, plan and surveyor plan were marked as Ex.C.1 to Ex.C.3.

5.The petitioner/appellant has not filed any objection to the commissioner's report. There is no reasons stated for why he wanted to examine the surveyor.

6.Further the order is only return and not a final order. The petitioner can represent the petition before the Principal Subordinate Court. Only after rejecting the petition by the Court below without numbering, he can file revision.



7. There is no reason stated for examining the surveyor as additional witness in the appeal. The revision filed by the petitioner is only to drag on the appeal proceedings. Hence, the learned Subordinate Judge, Nagercoil, has rightly returned the Unnumbered I.A. (Court Fee) No.1474 of 2020 in A.S.No.21 of 2019 before taking on file and hence, the Civil Revision is not maintainable.

8. Finally, this Civil Revision Petition stands dismissed. No Costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

ksa

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Principal Subordinate Judge,
Nagercoil.

2. The Principal District Munsif,
Nagercoil.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-29424[F] dated 17/09/2021)

+1 CC to M/s.M.SURI, Advocate (SR-29477[F] dated 17/09/2021)

+1 CC to M/s.SPL. GP (SR-29572[F] dated 20/09/2021)

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17.09.2021

RK (24.09.2021) 3P 6C