



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08.06.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.R.SWAMINATHAN

C.R.P (PD) (MD) No.822 of 2021

and

C.M.P(MD) No.4418 of 2021

WEB COPY

K.Muniasamy ...Petitioner/Petitioner/Respondent/Plaintiff

-Vs-

1.Kaliyammal

2.Meena ...Respondents/Respondents/Petitioners/Defendants

Prayer: This Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and ex-order passed in I.A.No.1 of 2020 in I.A.No.959 of 2018 in O.S.No.285 of 2006 dated 24.02.2021 on the file of the III Additional District Munsif, Tiruchirappalli.

For Petitioner : Mr.J.Alaguraam Jothi

For Respondents : Mr.M.P.Senthil

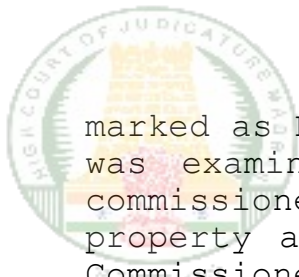
ORDER

Heard the learned counsel on either side.

2.The revision petitioner is the plaintiff in O.S.No.285 of 2006 on the file of the learned III Additional District Munsif, Thiruchirappalli. In the said suit, the petitioner filed an application for appointing an Advocate Commissioner to inspect the suit property and to note down the features. Originally, the warrant was not fully executed. Therefore, the warrant was re-issued. After conducting the inspection, the Advocate Commissioner had filed the report also. To scrap the same, I.A.No.1 of 2020 was filed before the Court below. The said I.A. was dismissed by the impugned order dated 24.02.2021. Questioning the same, the revision petition has been filed.

3.The learned counsel for the revision petitioner reiterated all the contentions set out in the memorandum of grounds. He would point out that the Advocate Commissioner's report is thoroughly faulty. He would state that on 31.03.2019, the inspection was done behind the back of the revision petitioner. He therefore submitted that the commissioner's report deserves to be scraped.

4.I am not persuaded by the aforesaid contentions of the petitioner. As pointed by the learned counsel for the respondent, the suit is of the year 2006. It is a suit for injunction. It was the petitioner, who filed the application in I.A.No.105 of 2006 for appointing an Advocate Commissioner. The Commissioner had filed an interim report along with rough plan and the same was originally



marked as Ex.C1 and Ex.C2. Thereafter, the Advocate Commissioner who was examined as D.W.2, admitted that he could not complete the commissioner work while noting down the western boundary of the suit property and an application was filed for directing the very same Commissioner to inspect the suit property along with qualified surveyor and videograph the inspection and thereafter, file report and plan. This I.A. was allowed as early as on 18.01.2019. Pursuant to the order passed by the trial Court, the Advocate Commissioner had visited the suit property on quite a few occasions. For some reasons or the other, the work could not be carried on and it was adjourned. Finally the Advocate Commissioner gave notice that he would inspect the suit property again on 31.03.2019. On the said date, the Surveyor was present. The entire inspection was also videographed. The petitioner citing some reasons had chosen to be absent. Thereafter, he filed the present application for scrapping the report. The learned trial Judge had clearly mentioned that the petitioner had not made out any case for scrapping the report. It is also pointed out that when the suit is only for the relief of injunction, it is the petitioner, who has to establish his case by positive evidence. The Advocate Commissioner's report may not really have a bearing on the aspect of possession.

5. Therefore, I do not find any ground to interfere with the order impugned in the civil revision petition. This Civil Revision Petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Mrn

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 III Additional District Munsif,
Thiruchirappalli.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-19005[F] dated 08/06/2021)

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