



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 25.11.2021**

**CORAM**

**THE HONOURABLE MS.JUSTICE P.T.ASHA**

**C.R.P (PD) (MD) No.79 of 2017**

**and**

**C.M.P (MD) No.300 of 2017**

WEB COPY

M/s.Kamadhenu Enterprises,  
Registered partnership firm  
rep., by its Managing Partnership  
Elango

... Petitioner

**Vs.**

Sankaran

... Respondent

**PRAYER:-** Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 03.10.2016 passed in I.A.No.511 of 2014 in O.S.No.151 of 2011 on the file of the Principal District Munsif Court, Karur.

|                |                       |
|----------------|-----------------------|
| For Petitioner | : Mr.G.Venugopal      |
| For Respondent | : Mr.N.Shanmugaselvam |

**ORDER**

Aggrieved by the dismissal of the application seeking recall of the witness summon issued to the Advocate Commissioner B.Baskaran, the first defendant is before this Court.

2.The facts in brief are as follows:-

(i) The plaintiff/respondent herein had filed a suit in O.S.No.151 of 2011 on the file of the District Munsif, Karur, for an injunction restraining the defendants from interfering with his right to draw water, from the well in the B-schedule through the common channel to his lands and for mandatory injunction.

(ii) Without traversing into the intricate details of the pleadings, this Court is just considering the issue relevant for disposing of the above petition. Earlier, one Muthusamy had filed a suit for partition in O.S.No.31 of 2011 against the petitioner, respondent and others in which an Advocate Commissioner had been appointed and a report was submitted. The Advocate Commissioner appointed therein is the very same commissioner, who has been appointed in the instant case. The said suit had been settled between the parties without impleading the petitioner herein and without issuing notice to the plaintiff. The first defendant therefore took out an application in I.A.No.511 of 2014 to recall



the witness summon issued to the Advocate Commissioner.

(iii) This petition was filed by the petitioner herein by stating that the Advocate Commissioner, whom the plaintiff seeks to examine as plaintiff's side witness, is the Advocate Commissioner in the instant case also and therefore, he cannot be examined as a party witness and the Commissioner's report in O.S.No.31 of 2011 cannot be marked in this fashion. The warrant issued to the Advocate Commissioner in the suit in O.S.No.31 of 2011 was only to note down the physical features and there was no instruction regarding the matter relating to mandatory injunction.

(iv) The learned Principal District Munsif, Karur, dismissed the petition, by his order, dated 03.10.2016 and aggrieved by the same, the first defendant /petitioner is before this Court.

3.Heard the learned counsel appearing on either side and perused the records.

4.It is an admitted fact that the Commissioner, who is now sought to be examined on the side of the plaintiff as P.W.2, is the Advocate Commissioner in the earlier suit as well and therefore, he can only be examined as a Court witness and not as a party witness. The parties would inform the Court that the chief examination of the Advocate Commissioner as P.W.2 has been received into Court. In the above circumstances, the chief examination rendered by P.W.2 Advocate Commissioner shall be eschewed and he shall be treated as a Court witness and both parties are free to cross examine him.

5.The suit is of the year 2011 and nearly 10 years have lapsed, since its institution. Therefore, there shall be a direction to the learned Principal District Munsif, Karur, to dispose of the suit in O.S.No.151 of 2011 within a period of one month from the date of receipt of a copy of this order. It is also further directed that the evidence in the above suit shall be taken on a day-to-day basis.

6.With the above direction, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cp

<https://hcservices.ecourts.gov.in/hcservices/>



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:-

The Principal District Munsif,  
Karur.

Copy to

The Registrar Judicial,  
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M.P. SENTHIL, Advocate ( SR-36228[F] dated 29/11/2021 )

C.R.P (PD) (MD) No.79 of 2017  
25.11.2021

AM(CO)  
KB(30.12.2021) 3P 4C