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C.R.P.No.1423 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2022

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THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.1423 of 2017
and C.M.P.No.6609 of 2017

Pichaiyan .. Petitioner
Vs.

Baskaran .. Respondent

Prayer:- Civil Revision Petition filed under Section 115 of CPC to allow this revision and set aside the order dated 23.01.2017 passed by the District Munsif Court, Mannargudi in E.P.No.52 of 2010 in O.S.No.99 of 2005.

For Petitioner : Mr.P.Sesubalan Raja

For Respondent : M/s.P.T.Ramadevi

ORDER

This Civil Revision Petition has been filed as against the order dated 23.01.2017 passed by the District Munsif Court, Mannargudi in E.P.No.52 of 2010 in O.S.No.99 of 2005, thereby the Court ordered to arrest the petitioner for violation of the decree passed in O.S.No.99 of 2005.

2. The respondent filed a suit for permanent injunction in respect of the suit property. In the said suit, after receipt of summons, the petitioner herein failed to appear and as such he was set exparte and an exparte decree was



passed. In violation of the said decree, the respondent filed an execution petition, in which, the execution Court ordered for arrest of the petitioner for violation of the decree passed against the petitioner.

3. The learned counsel for the revision petitioner would submit that the petitioner as well as the respondent had purchased their respective properties from a same vendor to an extent of 288 sq.ft. Unfortunately, both the sale deeds did not contain the measurement of each side, except the boundaries and survey numbers. Therefore, there were dispute between the petitioner and the respondent herein. In order to measure the properties, as per the sale deeds of the petitioner as well as the respondent herein, this Court appointed an Advocate Commissioner one Mr.S.Illamuhil, to measure the suit properties and to note down the physical features and submit a report before this Court. His remuneration was also fixed at Rs.20,000/-.

4. Both the learned counsel represented that so far, the Advocate Commissioner did not inspect the property as directed by this Court and the Advocate Commissioner failed to execute the warrant of commission issued by this Court. Both the parties have paid Rs.10,000/- each as remuneration to the Advocate Commissioner. Therefore, this Court directed the Registry to print the



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name of the Advocate Commissioner. Even till today, the Advocate Commissioner did not appear before this Court.

5. Therefore, the warrant of appointment issued to Mr. S.Illamuhil stands recalled.

6. In order to solve the issue in the considered opinion of this Court, it would be appropriate to appoint an Advocate Commissioner in the local bar of Mannargudi, to measure the property with the help of a surveyor as per the respective documents of both the revision petitioner as well as the respondent.

7. Therefore, the execution Court, i.e, the District Munsif Court, Mannargudi, is directed to appoint an Advocate Commissioner from the local bar to measure the property with the help of a surveyor as per the respective documents of the parties and on receipt of the report from the Advocate Commissioner, pass orders on merits and in accordance with law.

8. The Advocate Commissioner, Mr.S.Illamuhil having office at No.261, New Additional Law Chambers, Madras High Court Campus, Chennai-104, is



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directed to return the remuneration which was received by him to the learned counsel for the petitioner and the learned counsel for the respondent of a sum of Rs.10,000/- (Rupees Ten Thousand only) each, forthwith.

9. In view of the above, the order dated 23.01.2017 passed by the District Munsif Court, Mannargudi in E.P.No.52 of 2010 in O.S.No.99 of 2005, is hereby set aside. Accordingly, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

23.12.2022

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

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To

The District Munsif Court, Mannargudi.

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