



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.04.2022**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P (MD)No.589 of 2018

and

C.M.P (MD)No.2618 of 2018

David Palanisamy

... Petitioner/Respondent/
Plaintiff

Vs.

Ramaiah

... Respondent/Petitioner/
Defendant

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decretal order, dated, 08.12.2017, made in I.A.No.339 of 2017 in O.S.No.87 of 2010 on the file of the District Munsif cum Judicial Magistrate, Thirumayam.

For Petitioner : Mr.K.Baalasundharam

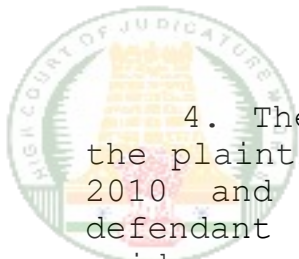
For Respondent : No Appearance

ORDER

The plaintiff is the revision petitioner.

2. The plaintiff has filed a suit for mandatory injunction and permanent injunction. Pending the suit, the plaintiff had filed I.A.No.208 of 2010 for appointment of an Advocate Commissioner along with District Surveyor and to file a report and plan. The said application was allowed. The Advocate Commissioner filed his report on 03.07.2010. The defendant has filed an objection to the said Commissioner's report on 09.12.2010. Thereafter, the defendant has not proceeded further with regard to the Commissioner's report.

3. The plaintiff was examined in June 2015. Thereafter, the defendant was examined in July 2016. The evidence was closed and the plaintiff has filed his written arguments. The plaintiff has filed a written arguments and the defendant has also completed his arguments. Thereafter, the trial Court has posted the matter for judgment on 21.07.2017. At that stage, the defendant has filed application in I.A.No.339 of 2017 for appointment of a new Advocate Commissioner to measure the suit schedule properties along with Surveyor. The said application has been allowed by the trial Court. Challenging the same, the present Civil Revision Petition has been filed by the plaintiff.



4. The learned counsel for the petitioner has contended that the plaintiff had already filed a Commissioner application in April 2010 and a Commissioner report was filed on 03.07.2010. The defendant has filed their objection on 09.12.2010. Thereafter, the evidence on both the sides was closed and when the suit was posted for judgment by the trial Court, the defendants have filed the present application for appointment of a fresh Advocate Commissioner. The learned trial Judge has proceeded to allow the said application unmindful of the fact that the previous Commissioner's report has not been scraped.

5. Even though the respondent has engaged a counsel, there is no representation on the side of the respondent.

6. I have carefully considered the submissions made on the side of the petitioner and perused the typedset of papers.

7. The suit is of the year 2010. The Advocate Commissioner's report has been filed in the year 2010 itself. The defendant had filed their objection also on 09.12.2010. Thereafter, they have waited for 7 long years till the suit is posted for judgment and have filed a present application for appointment of a fresh Commissioner. The report of the first Commissioner has not been scraped by the trial Court. That apart, the present petition has been filed after the delay of 7 years, when the suit is posted for judgment. The trial Court has erroneously allowed the said application unmindful of the delay on the side of the defendant, especially without seeking a prayer for scraping the report of the first Commissioner.

8. Accordingly, this Civil Revision Petition stands allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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 District Munsif cum Judicial Magistrate,
Thirumayam.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.R.P (MD) No.589 of 2018
20.04.2022

RK(13/05/2022) 3P 4C