



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.01.2022

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

C.R.P. (MD) No.1704 of 2021

and

C.M.P (MD) No.9130 of 2021

Alphonsa Cashew Industries,
Rep.by its Manager,
Shaji, S/o.Daniel,
Kudukkichivilai,
Edaicode, Malamari Post,
Vilavancode Taluk,
Kanyakumari District.

...Revision Petitioner/Petitioner/
Plaintiff

Vs.

Wilson

... Respondent/ Respondent/
Defendent

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 10.02.2020 passed in I.A.No.492 of 2018 in O.S.No.175 of 2016 on the file of the Principal District Munsif Court, Kuzhithurai and thereby allow the civil revision petition.

For Petitioner : Mr.MR.Sreenivasan,
M/S.R.Nandakumar

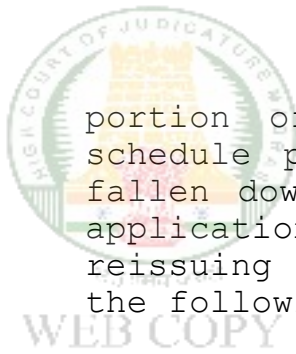
For Respondent : Mr.N.S.Ramakrishnadoss

ORDER

The above application has been filed by the plaintiff challenging the refusal of the Court below, namely, Principal District Munsif Court, Kuzhithurai to reissue the warrant to the Advocate Commissioner to note down the subsequent event in the suit property. Without going into the details of the pleadings, suffice it to state that earlier an Advocate Commissioner had visited the suit scheduled property and submitted a detailed report. The Commissioner had visited the property and filed her report on 09.01.2018.

2.The plaintiff's contention is that on 25.10.2018 due to the extensive excavation of the earth in the 'B' schedule property, a

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



portion of the compound wall and latrine situated in the 'A' schedule property as described in the Commissioner's report, had fallen down. The plaintiff had therefore, taken out the impugned application in I.A.No.492 of 2018 in O.S.No.175 of 2016 for reissuing the warrant to the earlier Commissioner for noting down the following details:-

1) Commissioner is requested to note and measure the fallen portion of A-schedule property, the compound wall and the latrine building therein due to the large scale of excavation of soil from B-schedule property.

2) Commissioner is requested to observe that, whether any possibility of falling down of remaining northern portion of A-schedule property due to the falling down of the A-schedule property.

3) Commissioner is requested to take sufficient photographs as needed.

4) Such other facts which the plaintiff may request at the spot may also be noted.

3.This application was objected to by the respondent and ultimately the learned Judge by the impugned order has dismissed the application stating that there cannot be a second petition for directing the Advocate Commissioner to inspect the property and it appears to be an exercise for gathering evidence. The learned Judge has also observed that the petitioner has not sought for scrapping the earlier Commissioner's report before filing this application. Challenging the same, the petitioner/plaintiff is before this Court.

4.The learned counsel appearing for the petitioner would submit that the report of the Advocate Commissioner is very essential for quantifying the damages and for noting down the subsequent event.

5.Per contra, the learned counsel appearing for the respondent would submit that without assistance of the qualified Engineer, the extent of the damage cannot be ascertain.

6.Heard the learned counsel on either side and perused the materials available on record.

7.The learned Judge has not appreciated the impugned petition from the correct perspective. The plaintiff has been constrained to move the application only on account of event that had happened subsequent to the earlier visit by the Commissioner. The petitioner has also not sought for scrapping the earlier report but only for reissuing the warrant to the very same Commissioner, so that the present position of the wall in the suit 'A' schedule property could



be ascertained. As argued by the learned counsel for the respondent useful purpose would be served only if an Engineer assists the Advocate Commissioner in assisting the damage caused to the said construction. Therefore, the learned Principal District Munsif, Kuzhithurai shall issue warrant to the Advocate Commissioner with a direction to the Commissioner to take the assistance of the qualified Engineer for inspection of the property and noting the extent of the damage alleged to have been caused to the wall. Accordingly, the impugned order in I.A.No.492 of 2018 in O.S.No.175 of 2016 is set aside and this civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

gns

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 Court,
Kuzhithurai.

+1 CC to M/s.R.NANDAKUMAR, Advocate (SR-2106[F] dated 21/01/2022)

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RD(10.02.2022) 3P 3C