



WEB COPY



CRP. No.102 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 07.03.2023**

**CORAM :**

**THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI**

**CRP No.102 of 2023**

S.Kalimbasha

.... Petitioner

-Vs-

Fathima Bi

.... Respondent

**Prayer :** Transfer Civil Miscellaneous Petition under Section 24 of C.P.C., to set aside the fair and decreetal order dated 22.11.2022 made in I.A No.470 of 2022 in O.S No. 73 of 2015 on the file of Principal District Munsif, Tiruppur.

For Petitioner : Mr.I.Abrar Mohamed Abdullah  
For Respondent : No representation

**ORDER**

This petition has been filed to set aside the fair and decreetal order dated 22.11.2022 made in I.A No.470 of 2022 in O.S No. 73 of 2015 on the file of Principal District Munsif, Tiruppur.

2. Heard the learned counsel for the petitioner and there is no representation on the behalf of the respondent. Petitioner is the plaintiff,



respondent is the defendant in suit.

3. The petitioner herein filed IA No. 470 of 2022 in O.S No.73 of 2015 on the file of the Principal District Munsif, Tiruppur, to appoint fresh advocate commissioner to survey the suit property since because then advocate commissioner is junior advocate to the defendant counsel. After considering the submissions on either side, the Trial Court dismissed the said I.A No. 470 of 2022, against which the plaintiff/petitioner filed this revision petition.

4. On seeing the records, it reveals that the suit was filed in the year 2015. Thereafter, Advocate commissioner was appointed and he noted down the physical features of the suit property and filed his report. Subsequently, the said report was marked as Ex.C1 and Ex.C2. Now the D.W.1 was examined and during the cross examination, the petitioner/plaintiff filed the petition to appoint new Advocate commissioner.

5. On bare perusal of records, it is seen that Advocate commissioner's report was filed in the year 2015 but till 2021 the petitioner has not raised any objection with regard to advocate commissioner's report. Even assuming that the Advocate commissioner is respondent counsel's junior that cannot be a reason to set aside the Advocate Commissioner's report. If the Advocate commissioner is junior to the respondent's counsel, the petitioner should have filed his objection



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while filing the Advocate commissioner report. Further, the petitioner ought to have raised his objection and to appoint fresh advocate commissioner within two weeks from the date of filing of the advocate commissioner's report as per manner known to law. Furthermore, if there is any discrepancy in the Advocate commissioner's report the same can be removed only by filing objection but the same was not done by the petitioner without which new advocate commissioner cannot be appointed. Moreover, the petitioner has not assigned any reason to set aside the earlier commissioner report the Trial Court rightly appreciated this facts which needs no interference.

6. For the foregoing reasons, this petition is dismissed. No costs. Consequentially, connected miscellaneous petition is closed.

**07.03.2023**

Index : Yes/No  
Internet : Yes/No  
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To  
1. The Principal District Munsif, Ambur.



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**T.V.THAMILSELVI, J.**  
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