



C.R.P.(PD)No.2611



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.2610 of 2011

Velusamy

.. Petitioner

Vs.

1.Luxmi

2.Bagyalakshmi

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 09.03.2011 passed by the learned District Munsif, Palladam, in I.A.No.362 of 2011 in I.A.No.1094 of 2008 in O.S.No.128 of 2003.

For Petitioner : No appearance

For R2 : Mr.K.Goviganesan



ORDER

Heard Mr.K.Govi Ganesan, learned counsel for the 2nd respondent. I have carefully perused the records.

2. The plaintiff is the revision petitioner and defendants are the respondents. The plaintiff filed an application in I.A.No.362 of 2011 to reopen the proceedings in I.A.No.1094 of 2008. The said application was dismissed by an order of the Court on 09.03.2011.

3. The suit is for bare injunction. In that suit, an application for appointment of Advocate Commissioner was filed. The said application was allowed. The Advocate Commissioner has also visited the property and filed a report on 13.04.2007. On that day, the plaintiff was not able to be present, because there was a condolence in his family and hence, he could not accompany the Advocate Commissioner. Thereafter, he took out an other application in I.A.No.1094 of 2008 to measure the suit property. The Court accepting the reasons given by the petitioner, allowed the application. However, in this application, the petitioner pleaded due to his illness, he was unable to take the Advocate Commissioner to get the benefits of the order passed in I.A.No.1094 of 2008. consequently, it was closed on 28.02.2011.



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4. Immediately, on its closure, he filed an application on 09.03.2011 to re-open I.A.No.1094 of 2008. The said application was dismissed by the Court, without even issuing notice to the respondents (by dispensing with notice to the respondents), on 09.03.2011. The ground on which the application was dismissed, was that the petitioner did not take effective steps for the purpose of getting the Commissioner to visit the property and note down the physical features. The Commissioner has visited the site in I.A.No.691 of 2003 as well as in I.A.No.1094 of 2008. The Court below has felt that an Advocate Commissioner must be appointed not once, but on two occasions, which shows that the Commissioner's report with a plan would be essential for the disposal of the suit.

5. In the light of the fact that the Commissioner has been appointed twice, I am inclined to grant another opportunity to the petitioner to take the very same Commissioner for the purpose of submitting a report pursuant to the orders in I.A.No.1094 of 2008.

6. In fine,

(i) Civil Revision Petition is allowed and the order passed by the learned District Munsif, Palladam, on 09.03.2011 in I.A.No.362 of 2011 in I.A.No.1094 of 2008 is set aside.

(ii) The learned District Munsif, Palladam, shall issue warrant to the very same



Commissioner, who submitted his report on 11.12.2006.

(iii) The suit being of the year 2003, the warrant shall be issued to the

Commissioner within two weeks from the date of receipt of a copy of this order and the inspection shall be done after notice to either side within two weeks thereafter.

(iv) Once a report of the Commissioner is received, the suit shall be taken up for disposal. In any event, the suit shall be disposed of on or before 28.02.2024. No costs.

14.07.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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To

The learned District Munsif, Palladam.



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V.LAKSHMINARAYANAN,J.

Kj

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