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C.R.P. Nos. 735, 736 & 740 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2023

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THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.Nos.735, 736 & 740 of 2023

and

C.M.P.No.5899 of 2023

Perumayee

... Petitioner in all CRPs

Vs

1. Vasudevan

2.S.Ganesan

... Respondents in all CRPs

PRAYER in CRP.No.735 of 2023 : Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the fair and Decretal order dated 07.01.2023 made in I.A.No. 04 of 2022 in I.A.No.181 of 2008 in O.S.No.41 of 2008 on the file of the District Munsif Court, Paramathi.

PRAYER in CRP.No.736 of 2023 : Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the fair and Decretal order dated 07.01.2023 made in I.A.No. 02 of 2022 in I.A.No.181



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of 2008 in O.S.No.41 of 2008 on the file of the District Munsif Court,
Paramathi.

PRAYER in CRP.No.740 of 2023 : Civil Revision Petition filed Under
Article 227 of Constitution of India, praying to set aside the fair and
Decretal order dated 07.01.2023 made in I.A.No. 03 of 2022 in I.A.No.181
of 2008 in O.S.No.41 of 2008 on the file of the District Munsif Court,
Paramathi.

For Petitioner in all CRPs : Mr.V.Kadhirvelu

For Respondent in all CRPs : No appearance

COMMON ORDER

The petitioner has prayed to set aside the decretal order dated
07.01.2023 made in I.A.No.4,2 & 3 of 2022, respectively in I.A.No.181 of
2008 in O.S.No.41 of 2008 on the file of the District Munsif Court,
Paramathi.

2. The 1st respondent/plaintiff has filed a suit before the trial Court
against the revision petitioner/2nd defendant, against which the revision
petitioner/2nd defendant has preferred this revision petition.



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3. The learned counsel for the revision petitioner submitted that the suit in O.S.No.41 of 2008 has been filed by the plaintiff for permanent injunction with regard to pathway rights, mandatory injunction to remove the sand from the pathway, fix the boundary line between the properties, more particularly with regard to ABC pathway and mandatory injunction to remove the alleged encroachment made by the 4th defendant/respondent herein. The said suit was contested by the defendants by filing their written statement, issues are framed and the suit is posted for cross-examination of P.W.1. The 2nd defendant has filed applications before the learned District Munsif, Paramathi, in I.A.No.4 of 2022 to condone the delay of 4830 days for filing the objection to the Commissioner's report and plan, in I.A.2 of 2022 to scrap the Commissioner's report and plan and in I.A.No.3 of 2022, to re-issue the Commission warrant to the same Commissioner to visit the suit property along with Surveyor and file his report.

4. The said petitions were strongly objected to by the 1st respondent herein / plaintiff, stating that during cross-examination of the witnesses the defendants have filed applications, to drag on the proceedings and by not



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assigning proper reason for filing objection to the Commissioner's report and with regard to condonation of the delay.

5. Based on the submissions made by both sides' counsels, the learned trial Judge dismissed the applications on 07.01.2023, stating that the petition does not have report of the Commissioner and he has also not taken further steps to file the same and that no proper reasons have been assigned in the applications. Furthermore, during the pendency of cross-examination, the petitioner filed such applications, which were not acceptable, and accordingly, three applications were dismissed by the Court below.

6. The plaintiff further submitted that the adjudicating issues between the parties are, with regard to the usage of ABC pathway and that the measurement was not taken properly and it is ex-party Commission report. Moreover, the suit was originally filed against the defendant Subramaniam and after his death, his legal heirs more particularly the 2nd defendant was brought on record and therefore she was not able to approach the counsel in time and therefore she filed objections and sought to set aside



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the order passed against him. The trial Judge failed to take all those facts and ordered to set aside the same, and the facts reveal that the Commissioner's report was filed based on the ex-parte visit.

7. Now, during the pendency of the suit, the 2nd defendant / legal heirs/his wife was impleaded as 2nd defendant, who is aged about 60 years old lady doing agriculture, and therefore she filed applications to re-issue the Commission warrant to the same Commissioner to visit the suit property along with the Surveyor and to scrap the commission report and another I.A with a delay of 4830 days due to the lack of knowledge, so the 2nd defendant not able to approach the Court in time is neither negligent nor wanton, the trial Court ought to have appreciate all those facts. Hence those applications as such are acceptable and the order passed by the learned trial Judge in I.A.No.4,2 & 3 of 2022, respectively in I.A.No.181 of 2008 in O.S.No.41 of 2008 on 07.01.2023 is set aside and the applications are hereby allowed.



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8. Accordingly, the delay is condoned, Commissioner's report is scrapped and the trial Court is directed to re-issue the commission warrant to the same commissioner or fresh commissioner with stipulated time and dispose of the case within a period of six months from the date of receipt of a copy of this order as the suit is of the year 2008.

9. Accordingly, these Civil Revision Petitions are allowed. Consequently, connected miscellaneous petition is closed. No costs.

06.04.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No

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To

1. The District Munsif Judge, Paramathi.
2. The Section Officer, VR-section,
High Court of Madras.



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T.V.THAMILSELVI, J.

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