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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.11.2023

CORAM:

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

**C.R.P.(PD).No.574 of 2023
and C.M.P.No.4632 of 2023**

Usharani

... Petitioner

Vs.

Srinivasalu Naidu

... Respondent

Civil Revision Petition filed under Section 227 of the Constitution of India to set aside the order and decree dated 06.01.2023 passed in I.A.No.304 of 2022 in O.S.No.46 of 2017 on the file of District Munsif Court, Arakkonam and allow the same.

For Petitioner : Mr.A.Gouthaman

For Respondents : Mr.P.Krishnan

ORDER

The present civil revision petition has been filed to set aside the order and decree dated 06.01.2023 made in I.A.No.304 of 2022 in O.S.No.46 of 2017 on the file of District Munsif, Arakkonam and allow the same.



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2. The learned counsel appearing for the petitioner submitted that the respondent herein has filed O.S.No.46 of 2017 on the file of District Munsif Court, Arakkonam as against the petitioner as well as against one Vasantham for the relief of permanent injunction, restraining the defendant their men, agents and servants from any way interfering with his possession and enjoyment of the suit property. He further submitted that the respondent/plaintiff has filed commission application in I.A.No.171 of 2017 at the time of filing suit and got appointment of Advocate Commissioner. The Advocate Commissioner without issuing proper notice filed commission report in favour of the respondent/plaintiff. The report filed by Advocate Commissioner is biased one. Moreover the Commissioner did not take the assistance of Surveyor at the time of inspection. Since the petitioner initial counsel has not taken proper steps, the petitioner engaged another counsel and I.A.No.407 of 2018 to redirect the Advocate Commissioner to re-inspect the suit property along with petitioner Survey No.145/2 was filed and it was allowed on 12.12.2018 and redirected the Advocate Commissioner to inspect the property along with surveyor.



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3. He further submitted that the petitioner second counsel assured that she will take care of petitioner's case and take necessary steps. After second time inspection also the Advocate Commissioner has filed biased report again in favour of the plaintiff only. The petitioner was under the impression that the petitioner second counsel would have filed objection to the commissioner report. The petitioner has engaged the present counsel and came to know that I.A.No.407 of 2018 was posted for filing objection on petitioner side on 05.12.2019 and finally since the previous counsel did not file objection and it was closed on that day. The petitioner has no legal knowledge about Court proceedings and got valid objection to the Advocate Commissioner as he has not filed the plan for the suit properly. On the other hand he has filed map of petitioner Survey number only. More over there are certain correction and strike out make in the report which clearly proves the commissioner has not filed report in proper manner and his report is not justifiable one. There was a delay of 963 days in filing the objection to the commissioner report in the I.A. and the delay is neither willful nor wanton. Hence the petitioner has filed I.A.No. 304 of 2022 to condone the delay of 963 days in filing the



objection to commissioner report in the IA.No.304 of 2022 but the trial Court dismissed the same. Aggrieved by the above order the petitioner has preferred the present civil revision petition.

4. The learned counsel appearing for the respondent submitted that the petition is unsustainable both in law and on facts of the case. No valid reasons are given and the petitioner is changing the advocates and filing petitions. The property is inspected two times and the report is filed. In spite of sufficient time the petitioner not filed objections to the report.

5. Heard both sides and perused the materials available on record.

6. In view of the submissions made on either side, if the delay is condoned in filing objection to commissioner report it is no way going to cause delay or prejudice to the plaintiff and if defective report is filed before the Court it will only cause multiplicity of proceedings. Hence this Court is of the considered view that the order dated 06.01.2023 made in I.A.No.304 of 2002 in O.S.No.46 of 2017 on the file of the District



Munsif, Arakkonam is set aside and the delay in filing the objection to commissioner report is condoned. The learned District Munsif, Arakkonam is directed to receive the objection filed by the petitioner and dispose of the suit in O.S.No.46 of 2017 within a period of three months from the date of receipt of a copy of this order.

7. With these observations, the Civil Revision Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
dpq

08.11.2023

To
The District Munsif Court,
Arakkonam.



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T.V. THAMILSELVI, J.

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