



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA

PRASAD

**C.R.P.(PD).No.2842 of 2019
and C.M.P.No.18598 of 2019**

1. M. Shanmugam (died)

2. S.Annakodi

3. S. Pratap

4. S. Elango

... Petitioners

Petitioners 2 to 4 brought on records as
legal heirs of the deceased sole petitioner viz.,
M.Shanmugam vide Court order dated 03.10.2023
made in CMP.No.10010 of 2022 in
CRP.No.2842 of 2019 by JSNPJ

Vs.

1. Karpagavalli

2. Mathivanan

3. Sowenthirya Lakshmi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final order in I.A.No.940 of 2018 in O.S.No.556 of 2012 on the file of the I Additional District Munsif, Erode dated 05.07.2019.



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For Petitioners : Mr.S.Kaithamalai Kumaran
For Respondent : M/s.V.Pavithra
for M/s.V.Srimathi

ORDER

The present civil revision petition has been filed to set aside the fair and final order in I.A.No.940 of 2018 in O.S.No.556 of 2012 on the file of the I Additional District Munsif, Erode dated 05.07.2019.

2. The learned counsel appearing for the petitioner submitted that the petitioner is the defendant and also a counter claimant in suit. O.S.No.556 of 2012 was filed for permanent injunction restraining the revision petitioner/defendant from encroaching the public road. I.A.No.1280 of 2012 was filed on 12.12.2012 for appointment of an Advocate Commissioner to survey the suit property and an Advocate Commissioner was appointed to survey the land. The Advocate Commissioner in its report has stated that an extent of 8 feet on north south on the west and 3.6 feet north south on the east to a length of 44.3 feet east-west on the south and north has been encroached by the



respondents/plaintiffs. The learned counsel further submitted that Bhavani Canal is running 30 feet adjacent to the common public road and the respondents/ plaintiffs have started construction on 06.12.2012 and the suit O.S.No.556 of 2012 was filed on 07.12.2012 and in I.A.No.12 of 2012 status quo was ordered by the trial Court on 07.12.2012 and the construction was completed in the year 2016.

3. The learned counsel appearing for the respondents/plaintiffs submitted that the revision petitioner/defendant has not chosen to file any objection to the Advocate Commissioner's report which was filed in the year 2012 and subsequently I.A.No.940 of 2018 was filed by the petitioner/defendant to scrap the earlier report filed by the Advocate Commissioner or to reissue warrant to survey the property and the same was dismissed by the I Additional District Munsif, Erode on 05.07.2019. He further submitted that the Advocate Commissioner has measured the land with the surveyor and stated there is an actual encroachment made by the respondent about 10 feet North South on the East and West and 44.3 feet East West on North and South in the 30 feet public road. The respondents/plaintiffs have filed a reply statement in O.S.No.556 of 2012



on 11.08.2018 I.A.No.940 of 2018 was dismissed by the trial Court on 05.07.2019.

4. The learned counsel further submitted that the Advocate Commissioner has filed the report as early as in the year 2012 but the I.A.No.940 of 2018 was filed after a delay of 5 years that is in the year 2018. The learned counsel drew the attention of this Court to the fair and decreetal order passed by the trial Court in O.S.No.940 of 2018 dated 05.07.2019 in which it is clearly stated that the revision petitioner / defendant has not filed any objection to the Advocate Commissioner's report and the IA.No.940 of 2018 was fled after a delay of 5 years from the date of filing of the Advocate Commissioner's report and the relevant portion of the order is extracted as below:-

“The learned counsel for the respondent on the other hand, would submit in his arguments that the petitioner did no file any objections to the commissioner's report, this petition is filed after 5 years from the date of filing of commission, based on the private survey the petitioner cannot seek scrapping of the survey plan made by the Taluk Surveyor at the instance of the Advocate Commissioner, there is no need to re-issue warrant of commission or to scrap the earlier report hence this



petition is to be dismissed”.

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

6. The revision petitioner has filed this civil revision petition challenging the fair and decreetal order passed by the trial Court dated 05.07.2019 **dismissing the I.A.No.940 of 2018 to reissue warrant of Advocate Commissioner to survey the property which was filed after a delay of 5 years from the date of previous Advocate Commissioner's report. It is also submitted that the suit is in the trial stage and DW evidence stage.** At this juncture, this Court is not inclined to set aside the fair and decreetal order passed by the I Additional District Munsif, Erode in I.A.No.940 of 2019 dated 05.07.2019 which will cause delay in disposing the suit which is of the year 2012 and already 11 years have lapsed. **Hence, this Court is inclined to direct the learned I Additional District Munsif, Erode to dispose of the suit as expeditiously as possible within a period of three months from the date of receipt of a copy of this order.**



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7. The Civil Revision Petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is also closed.

Index : No
Internet : Yes
dpq

30.10.2023

To

1.The I Additional District Munsif,
Erode



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J. SATHYA NARAYANA PRASAD, J.

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