



CRP No.4392 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.4392 of 2023
and
C.M.P. No. 26620 & 26621 of 2023

J.Desingh

... Petitioner

Versus

1.A.Magibalan
2.D.Sudhakar
3.The Thasildhar
Polur,
Office of the Thasildar
Polur-606 803.
4.The Surveyor,
Office of the Thasildar
Polur-606 803.
5.The District Collector,
Officer of the District Collector,
Thiruvannamalai - 606 601.

...Respondents

Civil Revision Petition filed Under Article 227 of the Constitution of India, praying to set aside the order dated 26.07.2023 passed in I.A.No.2 of 2023 in O.S.No.98 of 2023 by the learned District Munsif Court, Polur.

For Petitioner : Mr. M. V. Vijayabaskar

ORDER

The petitioner has filed this revision petition to set aside the order dated 26.07.2023 passed in I.A.No.2 of 2023 in O.S.No.98 of 2023 by the learned

District Munsif Court, Polur.

<https://www.mhc.tn.gov.in/judis>



CRP No.4392 of 2023

2. Heard, Mr. M. V. Vijayabaskar, learned counsel for the petitioner and perused the materials available on record.

3. Before the trial Court the respondents 1 & 2/ plaintiffs have filed a suit O.S.No.98 of 2023 for the relief of declaration of title, delivery of possession of the B-Schedule property and to direct the 2nd and 3rd respondent to Sub-divided the B Schedule property and to grant patta in the name of the petitioner, accordingly, suit was allowed in favour of them. To execute the proceedings the defendants 1 & 2 have filed I.A.2 of 2023 in O.S.No.98 of 2023 under Order XXVI Rule 9 of CPC to appoint an Advocate Commissioner in order to measure the B-Schedule Property with the help of land Surveyor and to file a report and the same was allowed on 26.07.2023, by appointing Advocate Commissioner to measure the property.

4. The learned counsel for the petitioner submitted that on the first hearing itself the learned trial Judge appointed the Advocate Commissioner without giving opportunity to the defendants, but they are having valid defence to prove the case. If opportunity is not given to them, valuable right to defend the case will be defeated.



CRP No.4392 of 2023

5. On a perusal of the records, it reveals that Advocate Commissioner was appointed by the learned trial Judge.

6. Having the submission on the side of the plaintiffs alone, the learned trial Judge passed the order and no notice was served to the defendants. Without giving an opportunity to the defendants, the learned trial Judge erroneously passed the order impugned. Hence, this Court is inclined to give an opportunity to the petitioner to defend his case. Therefore, the order passed in I.A.No.2 of 2023 in O.S.No.98 of 2023 is hereby set aside.

7. However, the learned trial Judge is directed to issue notice to the defendants and proceed the case as per manner known to law.

8. In view of the above, this Civil Revision Petition is disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

22.11.2023

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

rri

Note: Issue Order copy on or before (24/11/2023)



WEB COPY



CRP No.4392 of 2023

T.V.THAMILSELVI, J.

rrr

To

1. The Additional Judge, Tiruppur.
2. The Section Officer,
VR-Section, High Court of Madras.

Civil Revision Petition No.4392 of 2023
and
C.M.P. No. 25244 of 2023

22.11.2023