



C.R.P.No. 4161 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE T.V.THAMILSELVI

C.R.P.No. 4161 of 2023

and

C.M.P.No.25384 of 2023

Chinnadurai

.. Petitioner

Vs

Uthayam @ Uthayasuriyan

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside fair and decreetal order dated 25.04.2023 passed by the learned Additional District Munsif, Chidambaram in I.A.No.532 of 2022 in O.S.No.68 of 2019.

For Petitioner : Mr.V.Balaji

ORDER

This Civil Revision Petition is filed challenging the impugned order passed in I.A.No.532 of 2022 in O.S.No.68 of 2019, the plaintiff has preferred this revision.

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2. Before the trial Court, the plaintiff / petitioner herein filed the suit for recovery of possession and permanent injunction in respect of 'A' and 'B' schedule property. Already, Advocate Commissioner also appointed and after receipt of the notice, the defendant / respondent herein also filed his written statement and the suit is also ripe for trial. The Advocate Commissioner was appointed and measured the property with the help of surveyor, as there was some discrepancy in the measurement, the plaintiff / petitioner herein filed objection but the trial Judge ignored the said objection and posted the case for trial. Therefore, necessity arose for the plaintiff / petitioner herein to file application praying to reissue the Commissioner warrant and to submit the fresh report after surveying the suit property with the help of Taluk surveyor and also to set aside the report of Advocate Commissioner. That application was dismissed by the trial Judge stating that there was no discrepancy found in the Commissioner report.

3. The learned counsel for the petitioner submits that at the time of measuring the property itself, he gave a memo of instruction to the



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Advocate Commissioner to measure the property but after measurement, he was not satisfied. So he raised objection to measure the property with four boundaries in respect of R.S.No.39/1A.

4. Therefore, even at the earlier receipt of the Commissioner, there was objection raised by the plaintiff / petitioner herein. If opportunity is not given to the plaintiff / petitioner herein to work out the remedy before the trial Court, by all means of evidence, his valuable right to defend the case will be defeated. Even at the time of earlier visit, the plaintiff / petitioner herein has raised objection in respect of the measurement. Therefore, necessity arose for him, seeking to reissue of the Commissioner warrant, as such is permissible but the trial Judge failed to appreciate the said aspect. Therefore, this Court is inclined to set aside the order passed by the trial Court in I.A.No.532 of 2022 in O.S.No.68 of 2019.

5. Accordingly, the Civil Revision Petition is allowed by setting aside the order passed in I.A.No.532 of 2022 in O.S.No.68 of 2019 on the file of Additional District Munsif, Chidambaram. The plaintiff / petitioner herein is



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directed to take steps to take the Commissioner, for inspection, at his costs,
within six weeks from the date of receipt of copy of this order. No costs.

Consequently, connected miscellaneous petition is closed.

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Index :Yes/No
Neutral Citation :Yes/No
AT

To
The Additional District Munsif, Chidambaram.



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T.V.THAMILSELVI, J.

AT

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