



C.R.P.No. 4871 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE T.V.THAMILSELVI

C.R.P.No. 4871 of 2023

and

C.M.P.No. 28814 of 2023

Pushpalatha

.. Petitioner

Vs

Krishnamoorthy

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 20.07.2023 made in I.A.No.3 of 2022 in I.A.No.3 of 2019 in O.S.No.50 of 2019 passed by the District Munsif, Rasipuram.

For Petitioner : Mr. B. Jawahar

ORDER

This Civil Revision Petition is filed challenging the order passed in I.A.No.3 of 2022 in I.A.No.3 of 2019 in O.S.No.50 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 permanent injunction against the defendant / respondent herein. The defendant / respondent herein was remained ex parte. During the pendency of the application in I.A.No.3 of 2019, the Advocate Commissioner was appointed to note down the physical features of the suit property and filed a report but on seeing the report, the existence physical features was not been properly mentioned. Hence, the plaintiff / petitioner herein raised objection to the concerned report and also filed the present application in I.A.No.3 of 2022 praying to strike off the earlier commissioner report and issue fresh warrant to the new Advocate Commissioner. That application was dismissed by the trial Judge holding that at the time of the Commissioner visit, in the presence of both plaintiff and defendant, the Advocate Commissioner measured the property with the help of the surveyor, so there is no irregularity in the Advocate Commissioner's report. Aggrieved by the said finding, the plaintiff has preferred this revision.

3. The learned counsel for the petitioner submits that as per the Advocate Commissioner's report, the plaintiff / petitioner herein extent was



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reduced by mentioning a 15 feet pathway said to be existed, infact, the said property belongs to the plaintiff / petitioner herein, the Commissioner has erroneously mentioned the pathway which requires a fresh report.

4. Admittedly, the plaintiff / petitioner herein filed the suit for the relief of permanent injunction and if at all any irregularity made in the Advocate Commissioner's report, the same has to be rectified by appointing a fresh Advocate Commissioner for that no prejudice will cause. Therefore, the order passed by the trial Judge in I.A.No.3 of 2022 in I.A.No.3 of 2019 in O.S.No.50 of 2019 is set aside. New Advocate Commissioner is ordered to be appointed.

5. In the result, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

20.12.2023

Index :Yes/No

Neutral Citation :Yes/No

AT

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T.V.THAMILSELVI, J.

AT

To
The District Munsif, Rasipuram.

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