



CRP(MD).No.40 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.03.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

CRP(MD).No. 40 of 2023

and

C.M.P(MD).Nos.238 and 2606 of 2023

Soundaram .. Petitioner/Respondent/Petitioner/Defendant

Vs.

1.Mangalanathan

2.Baghiya Gomathi .. Respondents/Petitioners/Respondents/Plaintiffs

PRAYER : Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.161 of 2018 in I.A.No.809 of 2016 in O.S.No.175 of 2016 dated 29.09.2021 on the file of the District Munsif Court, Ramanathapuram, Ramanathapuram District.

For Petitioner : Mr.S.A.Ajmal Khan

For Respondents : Mr.C.M.Arumugam (for R1 & R2)

ORDER

The present revision petition has been filed by the defendant in a suit for declaration of pathway right, permanent injunction and mandatory injunction.



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2. Pending suit, the plaintiffs had filed I.A.No.809 of 2016 for appointment of Advocate Commissioner to note down the physical features. The Commissioner has inspected the property and has also filed a report. Without filing any objection to the said Commissioner's report, the defendant had filed I.A.No.133 of 2017 to scrap the Commissioner's report and for appointment of a fresh Commissioner. The said application was partly allowed by the trial Court by appointing fresh Commissioner without scrapping the first Commissioner's report. This order was challenged by the plaintiff in C.R.P(MD).No.1261 of 2017, this Court was pleased to allow the revision and thereby, set aside the appointment of a fresh Commissioner.

3. Thereafter, the defendant had filed I.A.No.161 of 2018 to re-open I.A.No.809 of 2016 for the purpose of filing an objection to the first Commissioner's report. The said application has been dismissed by the trial Court. Challenging the same, the present revision petition has been filed.



4. According to the learned counsel appearing for the revision petitioner, the defendant/revision petitioner felt that the first Commissioner's report is erroneous and she had filed I.A.No.133 of 2017 to scrap the said report. The prayer was partly accepted by the trial Court. However, the appointment of fresh Commissioner was set aside down by this Court. Therefore, all along the petitioner was under the impression that the second Commissioner's report will be on file, so that there will not be any necessity for her to file an objection to the first Commissioner's report. Therefore, once the High Court has set aside the order of appointment of second Commissioner, they have to necessarily reopen the first commissioner's application, namely I.A.No.809 of 2016 in order to file their objections. However, the trial Court has dismissed the same on the ground that they cannot re-open the said application after a delay of so many years.

5. Per contra, the learned counsel appearing for the plaintiffs/respondents had contended that the first commissioner had filed his report in the year 2016 itself. Thereafter, the defendant waited for one year to file an application for scrapping the first commissioner's report, without filing objection to the first commissioner's report.



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Therefore, at this length of time, she cannot be permitted to file an objection to the first commissioner's report.

6. I carefully considered the submissions made on either side.

7. The request of the defendant/revision petitioner to re-open I.A.No.809 of 2016 is only for the purpose of accepting the objections on the side of the defendant for the first commissioner's report. This Court is of the opinion that for filing an objection to the Commissioner's report, I.A.No.809 of 2016 need not be re-opened. Therefore, I do not find any infirmity or illegality in the order passed by the learned District Munsif, Ramanathapuram, in dismissing I.A.No.161 of 2018. However, the trial has not yet begun the suit. Considering the said facts the defendant may be permitted to file her objections to the first Commissioner's report that was filed in I.A.No.809 of 2016 within a period of 10 days from the date of receipt of a copy of this order.

8. Considering the fact that the suit is pending for the past seven years, this Court is inclined to direct the learned District Munsif, Ramanathapuram, to dispose of the suit in O.S.No.175 of 2016 as expeditiously as possible, preferably on or before 31.03.2024.



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9. With the above observations, the Civil Revision Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

03.03.2023

Index : Yes / No
Internet : Yes / No
Rmk

To
1.The District Munsif, Ramanathapuram.



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R.VIJAYAKUMAR ,J.,

Rmk

Order made in
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