



C.R.P(MD)No.451 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.02.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.451 of 2023

and

C.M.P(MD)No.2148 of 2023

Devaki

... Petitioner/Petitioner/
Defendant

Vs.

John Irudhayaraj

... Respondent/Respondent/
Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 14-10-2022 made in I.A.No.2 of 2020 in O.S.No.353 of 2018 on the file of the I Additional District Munsif Court, Manapparai and allow the above civil revision petition.

For Petitioner : Mr.B.Prahalad Ravi

For Respondent : Mr.J.Madhu



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ORDER

The present revision petition has been filed by the defendant in a suit for declaration, recovery of possession and permanent injunction, challenging an order dismissing the application for scrapping the commissioner's report.

2. According to the learned counsel for the petitioner, Advocate Commissioner has inspected the suit schedule property without giving notice to the defendant. The notice sent by the Advocate Commissioner through registered post was received by the defendant only on the date of inspection. Therefore, the petitioner/defendant had filed an application to scrap the Commissioner's report.

3. The learned counsel appearing for the respondent/plaintiff had contended that the notice was served by the Advocate Commissioner to the junior counsel of the learned counsel of the defendant. However, the said notice was returned by the junior counsel without signature from the senior. Therefore, the defendant has wantonly avoided the notice and therefore, she cannot seek to scrap the report.



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4. The trial Court after considering the submissions on either side has arrived at a finding that the defendant had knowledge about the Commissioner's visit and she has avoided to accompany Commissioner during inspection. This order is under challenge in the present revision petition.

5. It is an admitted fact that the defendant was not present during the inspection conducted by the Advocate Commissioner. It is also an admitted fact that the notice issued by the Advocate Commissioner was received by the defendant only on the date of inspection. Though the contention of the learned counsel for the plaintiff that they had knowledge about the inspection may be true, actually no formal notice has been served upon the defendant. However, there are no grounds to scrap the commissioner's report. In case, if the defendant wants to give any memo of instructions, it can be done by way of an application for re-issue of warrant to the same commissioner.

6. In view of the above said facts, the order impugned in the revision petition is set aside. The trial Court is directed to re-issue the warrant to the same commissioner after giving notice to both the parties.



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The parties are at liberty to give memo of instructions. The commissioner shall inspect the suit properties and file his additional report within a period of thirty (30) days from the date of issuance of warrant. Considering the fact that the suit is of the year 2018, the learned I Additional District Munsif Court, Manapparai is directed to dispose of the suit on or before 31.12.2023.

7. With the above said observations, this Civil Revision Petition stands allowed to the extent as stated above. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

23.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

1. The I Additional District Munsif Court,
Manapparai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

R.VIJAYAKUMAR ,J.



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Order made in
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