



C.R.P.(MD)No.923 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.07.2023

CORAM :

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD)No.923 of 2022
and
C.M.P.(MD).No.8231 of 2023

Mallika (Died)

Sujit Kumar

...Petitioner/2nd Respondent/2nd Plaintiff

Vs.

1.Selvam

2.Amutha

...Respondents/Petitioners/ Defendants

PRAYER: Civil Revision Petition under Section 115 of Civil Procedure Code, to set aside the order dated 15.03.2022 passed in I.A.No.362 of 2018 in O.S.No.42 of 2018 on the file of the District Munsif Court, Periyakulam and all the present Civil Revision Petition.

For Petitioner : Mr.M.Saravanan

For Respondents : No Appearance



C.R.P.(MD)No.923 of 2022

ORDER

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This Civil Revision Petition is preferred as against the order dated 15.03.2022 passed in I.A.No.362 of 2018 in O.S.No.42 of 2018 on the file of the District Munsif Court, Periyakulam.

2. The petitioner herein, has filed a suit in O.S.No.42 of 2018 for bare injunction restraining the defendants from interfering in peaceful possession and enjoyment in the said suit property. During the pendency of the above suit, the petitioner herein preferred an application in I.A.No.216 of 2018 for appointment of Advocate Commissioner to measure the property with the help of the Surveyor and to note down the physical features. The same was allowed and Advocate Commissioner was appointed and a report was also filed by him. While so, the defendants in the above suit filed two applications in I.A.Nos.362 and 363 of 2018 to scrap the report of the Advocate Commissioner and for appointment of another Advocate Commissioner for the same purpose. However, the Court below allowed I.A.No.362 of 2018 to scrap the report of the Advocate Commissioner. However, the petition in I.A.No.363 of 2018 to appoint another Advocate Commissioner was dismissed. Against which, the petitioner herein preferred



C.R.P.(MD)No.923 of 2022

a revision in C.R.P.(MD).No.371 of 2021 in which a specific direction was issued to the learned Judge to re-issue the warrant to the same Advocate Commissioner to measure the property with the help of the Surveyor and to note down the physical features. However, the trial Court without taking effective steps to reissue the warrant to the same Advocate Commissioner as per the direction in C.R.P.(MD).No.371 of 2021 by stating that Mr.Malleswaran, Advocate who was appointed as Advocate Commissioner in this case was not practising and his whereabouts were not known to the respective counsel for the parties and by observing so, appointed another Advocate Commissioner, which is against the direction given in the above Revision Petition.

3. The Learned counsel for the revision petitioner would submit that the Advocate Commissioner is very much available and the Court below failed to take effective steps by consulting the respective counsels to know about the address of the earlier counsel. Hence, he prayed to set aside the order passed in I.A.No.363 of 2018 and to direct the learned District Munsif, Periyakulam, to reissue the warrant to the said counsel as per the direction given to the earlier counsel as per the direction.



C.R.P.(MD)No.923 of 2022

4. Since the respondents herein in C.R.P.(MD).No.371 of 2021 consented for reissuing the warrant to the same Commissioner, notice to the respondents is not required at this stage.

5. The contention of the learned counsel for the revision petitioner is acceptable and therefore, the order passed in I.A.No.363 of 2018 on the file of the learned District Munsif, Periyakulam, is set aside. The learned District Munsif, Periyakulam, is directed to reissue the warrant to the same Advocate Commissioner on his availability. The trial Court further directed seek the assistance of the learned counsel for the respective parties to find out the availability of the said Advocate Commissioner for carrying out the task entrusted to him.

6. Accordingly, this Civil Revision Petition is disposed of. No Costs. Consequently, the connected miscellaneous petition is closed.

13.07.2023

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

tsg



C.R.P.(MD)No.923 of 2022

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- To
- 1.The District Munsif Court,
Periyakulam.
 - 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(MD)No.923 of 2022

K.GOVINDARAJAN THILAKAVADI J.

tsg

**Order made in
C.R.P.(MD)No.923 of 2022**

13.07.2023