



C.R.P(MD) Nos.1419 and 1445 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	31.07.2023
Pronounced on	06.12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

**C.R.P.(MD) Nos.1419 and 1445 of 2022
and
C.M.P(MD)No.5897 of 2022**

Kalyani

**... Revision Petitioner in
both CRPs**

Versus

**1.Tirunelveli Corporation,
Represented by its Commissioner,
opposite to Baratha Bank,
Tirunelveli Junction,
Tirunelveli Taluk,
Tirunelveli District.**

2.Kalaiselvi

3.Ramar

**... Respondents in
both CRPs**



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Prayer in C.R.P.(MD)No.1419 of 2022 : The Civil Revision Petition is filed under article 227 of Constitution of India, to set aside the order passed in I.A.No.Unnumbered of 2021 in O.S.No.41 of 2009, dated 13.04.2022 on the file of the Principal Sub Court, Tirunelveli.

Prayer in C.R.P.(MD)No.1445 of 2022 : The Civil Revision Petition is filed under article 227 of Constitution of India, to set aside the docket order dated 15.11.2021 passed in O.S.No.41 of 2009 on the file of the Principal Sub Court, Tirunelveli.

For Revision Petitioner : Mr.H.Arumugam
(in both CRPs)

For Respondents : Mr.A.Sivanupandi for R1
(in both CRPs)
: Mr.D.Srinivasaragavan for R2 and R3

COMMON ORDER

These Revisions are preferred as against the order passed in unnumbered I.A in O.S.No.41 of 2009, dated 13.04.2022 on the file of the Principal Sub Court, Tirunelveli and as against the docket order passed in O.S.No. 41 of 2009, dated 15.11.2021 on the file of the Principal Sub Court, Tirunelveli.

2. According to the Revision Petitioner, she is the absolute owner of



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Plot No.48 in the approved layout namely “Rajarajeshwari Nagar” situated in Ayan Punja Survey No.822/1 to an extent of 6.10 cents. On the east of her plot, a 60 feet scheme road runs on the adjacent survey number, which is an approved development plan prepared under the provisions of Tamil Nadu Town and Country Planning Act. In the row of her plots, there are 5 plots including her plots i.e., Plot Nos.48 and 52. But as against the approved layout, the revenue officials maliciously sub-divided the plots and have shown 6 plots in the row with T.S.Nos.119, 120, 121, 122, 123 and 276 but the inclusion of T.S.No.276 was done by fraud.

3. While so, the adjacent owner of her plot on the western side i.e., Plot No.49 has encroached the Revision Petitioner's plot to an extent of 10 feet on the west based upon the fraudulent Town Survey Map. Hence, she filed a suit in O.S.No.41 of 2009 on the file of the Principal Sub-Court, Tirunelveli for recovery of vacant possession from the 3rd Respondent herein and also for compensation to a sum of Rs.3,00,000/- from the 2nd Respondent. However, the Respondents have stated that the road runs on the east of her property is only 50 feet and she was trying to grab 10 feet from her property while her 10 feet is still available on the



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east of her property i.e., on the 60 feet north-south scheme road.

4. She also submitted that even though the 1st Respondent Corporation filed written statement accepting that the width of the scheme road was 60 feet, they pleaded that when the road was connected with NGO 'B' Colony it was shown as 50 feet road. But, the Court below on an erroneous approach of law and facts, dismissed the suit on 22.09.2017. As against that she has filed an appeal in A.S.No.57 of 2018 on the file of the 4th Additional District Court, Tirunelveli. The appeal was allowed on 25.10.2019 and the matter was remanded with a specific direction to appoint an Advocate Commissioner to measure the Plot Nos.48 and 49 as per the approved layout and also as per the Town Surveyor Plan and with the title deeds of the parties and directed to take a decision afresh.

5. At the remand, the Trial court appointed an Advocate Commissioner, who without even measuring the sites has filed a report by simply stating that the scheme road runs on the east of her plot is not straight and its measurement appears to be 50 feet alone and therefore, he is not in a position to execute the warrant as directed by the Appellate Court and returned the same. The



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fact remains that the earlier Commissioner has not filed a proper report and thus the Appellate Court specifically directed the Trial Court to appoint an Advocate Commissioner to ascertain the physical features. Since the report of the Commissioner was not helpful and it does not reflect the measurement done, the Revision Petitioner filed a petition to scrap the report of earlier Commissioner and appoint a new Commissioner for the purpose of performing the duties as directed by the Appellate Court. But the Court below without even numbering the petition has rejected the same on 13.04.2022 by stating that on 15.11.2021 itself the Court has passed a docket order accepting the report and therefore, the petition is not maintainable. Aggrieved by this, the present Revision Petitions are preferred.

6. The Revision Petitioner was constrained to file these Revision Petitions to number the petition filed by the Revision Petitioner for appointment of a fresh Commissioner and also to set aside the docket order passed by the Trial Court, dated 15.11.2021.

7. The learned counsel appearing for the Revision Petitioner would



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submits that accepting the Commissioner's report by the Trial Court by its order, dated 15.11.2021 is contrary to the provisions of Code of Civil Procedure and it is an unknown procedure as report shall be considered only while deciding the case on merits.

8. He would further submit that when the report of the Commissioner indicates that the Commissioner is unable to give an accurate details about the measurement and identify the property, the Court below ought to have scrapped his report and ought to have appointed afresh Commissioner for the said purpose as directed by the Appellate Court.

9. He would further contend that when the Appellate Court has specifically remanded the matter for the purpose of identifying the property by appointing an Advocate Commissioner, the Trial Court is expected to appoint a Commissioner and get the report and cannot evade from deciding the specific issue upon which the Appellate Court remanded the suit.

10. On the other hand, the learned counsel appearing for the



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Respondents would submit that an Advocate Commissioner cannot be appointed for collecting the evidence. To find out whether there is any encroachment and the same can be done only by producing oral and documentary evidence and not by appointing an Advocate Commissioner.

11. Heard on both sides and perused the records

12. Since it is a specific contention of the Revision Petitioner that against the approved layout the revenue officials sub-divided the plots and have shown these plots in a row with T.S.Nos.119, 120, 121, 122, 123 and 276 and T.S.No.276 is fraudulently included by the revenue officials and that the adjacent owner of her plot on the western side to her Plot No.49 has encroached upon the plot of the Revision Petitioner to an extent of 10 feet on the west, based upon the fraudulent Town Surveyor Plan. The said encroachment cannot be ascertained by oral and documentary evidence but the said encroachment can be ascertained only by measuring the properties and only by appointing an Advocate Commissioner. The Trial Court ought to have allowed these petitions.



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13. Moreover, the Appellate Court had also directed the Trial Court to appoint the Advocate Commissioner to measure the Plot Nos.48 and 49 as per the approved layout and also as per the Town Surveyor Plan along with the title deeds of the parties. The Trial Court ought to have scrapped the report filed by the earlier Advocate Commissioner who has mentioned in his report that he was unable to measure the property as directed. The Trial Court ought to have appointed a new Commissioner for the purpose of carrying out the task as directed by the Appellate Court. The Trial Court ought to have numbered the application filed by the Revision Petitioner for appointment of an Advocate Commissioner afresh by scrapping the earlier report which is incomplete.

14. Hence, the Trial Court is directed to number the above petition filed by the Revision Petitioner for appointment of an Advocate Commissioner as directed by the Appellate Court.

15. The above Revision Petitions are allowed. The Trial Court is directed to number the petition filed by the Revision Petitioner for a appointment



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of an Advocate Commissioner for the purpose as directed by the Appellate Court and consequently, the docket order passed by the Trial Court is also set aside. No costs. Consequently, connected miscellaneous petition is closed.

06.12.2023

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Index:Yes/No
Speaking Order : Yes/No

To

The Principal Sub Court,
Tirunelveli



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K.GOVINDARAJAN THILAKAVADI,J.

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ORDER MADE IN

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and
C.M.P(MD)No.5897 of 2022

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