



C.R.P.(MD)No.1622 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.1622 of 2022

and

C.M.P.(MD)No.7059 of 2022

M.Kaathammal

... Petitioner

Vs.

S.Susi Pradeep

... Respondent

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.379 of 2018 in I.A.No.561 of 2016 in I.A.No.261 of 2014 in O.S.No.535 of 2014 on the file of the District Munsif cum Judicial Magistrate, Peraiyur dated 18.02.2021.

For Petitioner : Mr.C.K.M.Appaji

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.379 of 2018 in I.A.No.561 of 2016 in I.A.No.261 of 2014 in O.S.No.535 of 2014 dated 18.02.2021 on the file of the District Munsif



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cum Judicial Magistrate, Peraiyur, dismissing the petition for appointment of commissioner.

2. It is seen from the records that the respondent/plaintiff has filed a suit in O.S.No.535 of 2014 for permanent injunction restraining the revision petitioner/first defendant and one Santhanammal/second defendant and their men in anyway interfering with the peaceful possession and enjoyment of the first item of the suit property and for mandatory injunction to remove the construction made in the second item of the suit property. Pending suit, the respondent/plaintiff has filed a petition for appointment of Advocate Commissioner in I.A.No.261 of 2014 and an Advocate Commissioner was appointed and that the Advocate Commissioner, after visiting the property, has filed his report along with plan.

3. It is further evident that the revision petitioner/first defendant has filed a petition in I.A.No.347 of 2014 for re-issue of warrant of commission directing the Advocate Commissioner to measure the property and to file another report, that the said petition, after enquiry, was ordered



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to be dismissed and that the revision petitioner/first defendant has preferred a revision before this Court in C.R.P.(MD)No.728 of 2016 and the same was also ordered to be dismissed on 04.04.2016.

4. It is not in dispute that the revision petitioner/first defendant has again filed a petition in I.A.No.561 of 2016 for scrapping the Advocate Commissioner's report filed in I.A.No.261 of 2014 and for appointment of another Advocate Commissioner and that the said petition, after enquiry, was dismissed on 17.06.2017 and against the dismissal order, a civil revision in C.R.P.(MD)No.1430 of 2017 came to be filed and the same was also dismissed on 03.08.2017. Subsequently, the revision petitioner/first defendant has filed a petition in I.A.No.561 of 2016 to examine the Advocate Commissioner appointed in I.A.No.261 of 2014 and the Advocate Commissioner was examined and cross-examined and that when the case was posted for further evidence on the plaintiff's side, the above petition came to be filed.

5. The main contention of the learned counsel appearing for the revision petitioner is that the Advocate Commissioner in his evidence



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would admit that there were some contradictions between his report and plan and the plan given by the surveyor and that since the Advocate Commissioner himself has admitted the same, the report has to be scrapped and another Advocate Commissioner has to be appointed.

6. As rightly observed by the learned trial Judge, the answers elicited during the cross-examination of the Advocate Commissioner, by itself is not a ground to scrap the Advocate Commissioner's report or to appoint another Advocate Commissioner. Moreover, the suit is pending from 2014 onwards and even with respect to the commission application, it is a third round of litigation. Considering the above, the impugned order dismissing the petition cannot be found fault with. Hence, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

7. At this juncture, the learned counsel appearing for the revision petitioner would submit that another suit filed by the revision petitioner is also pending and joint trial was ordered.

8. Considering the above and also the fact that the above suit is



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pending from 2014 onwards, the learned trial Judge is hereby directed to complete the trial and dispose of the suits as expeditiously as possible, preferably, within a period of four months from the date of receipt of a copy of this order.

9. With the above direction, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

16.11.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The District Munsif cum Judicial Magistrate,
Peraiyur.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Order made in
C.R.P.(MD)No.1622 of 2022
and
C.M.P.(MD)No.7059 of 2022

Dated : 16.11.2023