



C.R.P(MD)No.640 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.07.2023

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THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.640 of 2018

and

C.M.P(MD)No.2796 of 2018

Anandhakrishnan

...Petitioner/Petitioner/
1st Defendant

Vs.

Palanisamy (Died)

...Nil/1st Respondent/
1st Plaintiff

1.Pappathi

2.Natchimuthu @ Mani

...Respondents 1 & 2/
Respondents 2 & 3/
Plaintiffs 2 & 3

3.Thanikasalam

4.Prema

...Respondents 3 & 4/
Respondents 4 & 5/
Defendants 2 & 3

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.352 of 2016 in O.S.No.248 of 2012 on the file of the Additional District Munsif Court, Karur, dated 25.01.2018.



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For Petitioner : Mr.S.Dheenadhayalan

For R1 & R2 : Mr.K.Govindarajan

For R3 & R4 : Mr.I.Sri Ranganathan

ORDER

This civil revision petition has been filed against the order passed by the Additional District Munsif Court, Karur in I.A.No.352 of 2016 in O.S.No.248 of 2012, dated 25.01.2018.

2. The first defendant in the suit is the revision petitioner before this Court as well as before the Trial Court in I.A.No.352 of 2016.

3. The short facts which give rise to the filing of this civil revision petition is that the plaintiffs, who are the respondents 1 and 2 herein have filed a suit for the relief of declaration in respect of the B Schedule pathway to reach the A schedule property. In the plaint, they have also given the measurements in respect of the B Schedule property. Whereas in the written statement, the defendants have disputed the measurements of the schedule of property. It appears that the plaintiffs immediately on filing the suit, have also sought for an appointment of Commissioner and



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the Commissioner was appointed in I.A.No.367 of 2012 and he also filed a report before the Trial Court. From the perusal of the report, it appears that the said Commissioner visited the property without the assistance of the Surveyor.

4. Hence, the petitioner herein, who is the first defendant before the Trial Court has filed an application for appointment of an Advocate Commissioner along with the assistance of Firka Surveyor to note down the physical features of the suit property.

5. The respondents/plaintiffs has strongly objected the application on the ground that the application is not maintainable in the absence of prayer to scrap the earlier Commissioner's report. They also objected to the appointment of second commission application since the petitioner herein has earlier not pressed a similar application.

6. The learned Trial Judge after taking into consideration of either side submissions, since the earlier application was dismissed as not pressed, has found that there is no merit in allowing the application. Besides, the learned Trial Judge also found that the instant application has been filed only to delay and prolong the proceedings of the trial.



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7. Aggrieved with the order, the petitioner has come up with this civil revision petition.

8. The learned counsel for the petitioner vehemently submits that, though earlier application was not pressed by them, the instant application become necessary, as only through this commission, the actual measurements of the disputed property could be fortified before this Court, and would also submit that earlier Commission was without the assistance of Surveyor. Therefore, he would contend that in order to elicit the fact, the appointment of Commissioner along with the Surveyor would be very much essential.

9. However, the learned counsel for the respondents contended that the very conduct of the petitioner in not pursuing the earlier commission application, and also the non-filing of the objection to the earlier Commissioner's report would suffice to dismiss the instant application, and he also relied on the judgment of this Court in the case of *Kalaiselvan Vs Gunaseeli (CRP(NPD)(MD)No.No.897 of 2015)*. He further submits that unless earlier Commissioner report is scrapped there is no scope for appointment of subsequent Commission.



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10. I have given my anxious consideration on either side submissions.

11. From the perusal of the records, as rightly submitted by the learned counsel for the respondents, petitioner has not prosecuted the earlier application for an appointment of Advocate Commissioner, which contain the prayer to scrap the earlier Commissioner's report. However the arguments advanced by the learned counsel for the petitioner/defendant is that, the disputed property is a pathway, and that in the plaint itself petitioner has given a measurement. Since the very measurement is under dispute, the earlier commissioner's report which was not with the assistance of the Surveyor would in no way assist the Court for better adjudication of the case. Therefore, he contended that the assistance of Surveyor would reduce the much oral evidence. This Court finds force in the submission of the learned counsel for the petitioner.

12. However, considering the long gap from the earlier Commissioner's report, this Court deem it appropriate to appoint the very same Advocate Commissioner, who has been appointed in I.A.No.367 of 2012 and the Advocate Commissioner is directed to get the assistance



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from the Taluk or appropriate jurisdictional Surveyor. If in any case, the earlier Advocate Commissioner is not willing to be a Commissioner, the Trial Court is at liberty to appoint some other Advocate Commissioner.

13. It is made clear that the visit of the Commissioner has to be completed within a period of 30 days from the date of receipt of copy of this order. This order may be produced before the Revenue Authorities so as to get the assistance of the Surveyor within a time frame shown in this order. Considering the pendency of suit since 2012, the learned Trial Judge is directed to dispose of the suit as expeditiously as possible preferably within a period of 6 months from the date of receipt of the copy of this order. Both the parties are directed to co-operate with the Court.

14. At this juncture, the learned counsel for the respondents rightly interfered and seeks this Court to pass the direction against the petitioner herein to bear the entire cost for the present appointment Commission. Thus, this Court order the petitioner herein will bear all costs.



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15. In the result, the Civil Revision Petition stands allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

14.07.2023

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

- 1.The District Munsif Court,
Karur.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

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