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C.R.P(MD)No.1937 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)No.1937 of 2023

and

C.M.P(MD)No.9701 of 2023

A.V.Rajaram

... Petitioner/Petitioner/
Petitioner/Plaintiff

Vs.

Rasu(Died)

1.Kannan

2.Muthurakku

3.Malliga

4.Shanthi

5.Mariselvai

6.Lakshmi

7.Panjavarnam

8.Kavitha

9.Ayyanar

10.Ramar

11.Lakshmanan

... Respondents/Respondents/
Respondents/Defendants

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and executable order dated 06.04.2023 made in I.A.No.3 of 2022 in I.A.No.351 of 2017 in O.S.No.198 of 2012 on the file of the Additional District Munsif Court, Thirumangalam, by allowing this civil revision petition.



For Petitioner

:Mr.R.Ramadurai

ORDER

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This civil revision petition is filed against the fair and executable order, dated 06.04.2023 made in I.A.No.3 of 2022 in I.A.No.351 of 2017 in O.S.No.198 of 2012 by the Additional District Munsif Court, Thirumangalam.

2.According to the revision petitioner/plaintiff, he filed a suit in O.S.No.198 of 2012 before the Additional District Munsif, Thirumangalam, for declaration and permanent injunction. During the pendency of the said suit, the petitioner/plaintiff filed an application in I.A.No.351 of 2017 for appointment of Advocate Commissioner to inspect the Suit property with the help of Surveyor. The said application was allowed, by and which, the Advocate Commissioner was appointed and also filed his report and plan. Being not satisfied with the report and plan of the Advocate Commissioner, the revision petitioner took out another application in I.A.No.3 of 2022 for appointment of fresh Commissioner for the same purpose. The said application was dismissed by the trial Court by stating that the second application for appointment of Advocate Commissioner was filed without filing an application to scrap the report of the earlier Commissioner, the said



application is not maintainable. Aggrieved by this, the present civil revision petition is filed.

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3.The learned counsel appearing for the petitioner/plaintiff would contend that the Advocate Commissioner has not inspected the suit property in accordance with the warrant issued by the Court and he had not measured the property as per the plaint documents produced by the plaintiff and hence, the trial Court ought to have considered the application and ought to have appointed a fresh commissioner for the said purpose. Hence, he prays for setting aside the order of the trial Court.

4.Heard the learned counsel appearing for the petitioner and perused the materials available on record.

5.Admittedly, in I.A.No.351 of 2017, Advocate Commissioner was appointed and also filed his report and plan, and as the second application was filed without scrapping the earlier report seeking for appointment of second Advocate Commissioner, which is not maintainable.

6.In view of the above, this Court directs the petitioner to file an application before the trial Court for scrapping of the earlier report of the



Advocate Commissioner in the manner known to law.

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7.With this observation, this Civil Revision Petition is closed. No costs. Consequently, connected miscellaneous petition is closed.

31.08.2023

NCC:Yes/No

Index:Yes/No

Internet:Yes/No

To

1.The Additional District Munsif Court,
Thirumangalam.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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K.GOVINDARAJAN THILAKAVADI, J.

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