



C.R.P.(MD) No.1994 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.08.2023

CORAM

THE HON'BLE **MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

C.R.P.(MD) No.1994 of 2023

and

C.M.P.(MD) No.9961 of 2023

Periyasamy

... Petitioner

Vs.

1.Ramalingam

2.Assistant Engineer,
Tamil Nadu Kalivuneeretre Pasana
Vivasayigal Sangam,
Kagithapuram, Karur District.

3.Secretary,
Tamil Nadu Kalivuneeretre Pasana
Vivasayigal Sangam,
Kagithapuram, Karur District.

... Respondents

Prayer:- This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 26.04.2023 passed in I.A.No. 2 of 2022 in O.S.No.285 of 2019 on the file of the Principal District Munsif Court, Karur.

For Petitioner : Mr.J.Sathiyaraj

For R1 : Mr.P.Athimoolapandian



C.R.P.(MD) No.1994 of 2023

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ORDER

This Civil Revision Petition has been filed by the petitioner against the impugned order dated 26.04.2023 passed by the learned Principal District Munsif, Karur in I.A.No.2 of 2022 in O.S.No.285 of 2019.

2. The suit in O.S.No.285 of 2019 was filed by the petitioner for bare injunction restraining the respondents/defendants from interfering with the petitioner's peaceful possession and enjoyment of the suit property. During the pendency of the said suit, the petitioner/plaintiff filed an application in I.A.No. 2 of 2022 under Order 26 Rule 9 of the Code of Civil Procedure, 1908, for appointment of an Advocate Commissioner to conduct a local inspection in the suit property and to note down its physical features and file a report and plan in this regard.

3. The said application was resisted on the side of the respondents/defendants by stating that since it is a bare injunction suit, the appointment of an Advocate Commissioner is not necessary and it is also pointed that the Advocate Commissioner was already appointed at the instance of the petitioner/plaintiff and he had inspected the suit property and filed his



C.R.P.(MD) No.1994 of 2023

report and therefore, there is no necessity to appoint the Advocate

Commissioner for the second time without scrapping the earlier report.

4. The Trial Court after considering the averments made in the affidavit and in the counter affidavit filed by the respective parties dismissed the said I.A. by stating that there is no necessity to appoint the Advocate Commissioner for the second time since the earlier report of the Advocate Commissioner is on record, against which, the present Civil Revision Petition has been preferred.

5. The learned counsel appearing for the petitioner would submit that though the Advocate Commissioner was appointed as per the order passed in I.A.No.678 of 2019, the said Advocate Commissioner failed to measure the property with the help of the Surveyor and for that reason, the petitioner/plaintiff has filed I.A.No.2 of 2022 to appoint the Advocate Commissioner once again to inspect the suit property and measure the same with the help of the Surveyor. The Trial Court without taking note of the above erroneously dismissed the I.A.No.2 of 2022.

6. The learned counsel appearing for the first respondent resisted the claim of the petitioner/plaintiff stating that there is no necessity for



C.R.P.(MD) No.1994 of 2023

appointment of the Advocate Commissioner for the second time since the earlier report of the Advocate Commissioner was not scrapped and form part of the record. In support of his contention, he relied upon the following two decision of the Madras High Court (Principal Seat of this Court):-

- i. **R.Sivasubramanian** Vs. **S.Balamurugan**, 2006 (2) CTC 54.
- ii. **V.Ramalingam** Vs. **Ponnaiyan @ Ponnusamy**, 2019-2-L.W.40.

7. It is submitted that in **R.Sivasubramanian** case cited *supra*, it was held that the Advocate Commissioner cannot be appointed for the second time unless the Trial Court feels that the earlier report of the Advocate Commissioner is unsatisfactory and needs further enquiry. In **V.Ramalingam** case cited *supra*, it was held that Advocate Commissioner cannot be appointed for collection of evidence.

8. Heard on both sides and perused the records.

9. The above decisions squarely apply to the facts of the present case. Without rendering the finding that the earlier Advocate Commissioner's report is not satisfactory and without scrapping the same, the appointment of the



C.R.P.(MD) No.1994 of 2023

Advocate Commissioner for the second time cannot be permitted. Moreover, it is a bare injunction suit, in which, the parties have to prove their possession only by oral and documentary evidence and the Advocate Commissioner cannot be appointed to collect evidence with regard to possession of any of the parties. Therefore, the above Civil Revision Petition is devoid of merits.

10. Considering the age of the suit, the Principal District Munsif, Karur is directed to dispose the suit in O.S.No.285 of 2019, without giving any unnecessary adjournments, expeditiously, within a period of 6 months from the date of receipt of a copy of this order.

11. Accordingly, this Civil Revision Petition is dismissed with the above direction. No cost. Consequently, connected Miscellaneous Petition is closed.

11.08.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To : The Principal District Munsif,
Karur.



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C.R.P.(MD) No.1994 of 2023

K.GOVINDARAJAN THILAKAVADI, J.

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C.R.P.(MD) No.1994 of 2023
and C.M.P.(MD) No.9961 of 2023

11.08.2023