



C.R.P(MD)No.233 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.03.2023

CORAM

THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD)No.233 of 2015

1.Surendran

2.Selvan

... Petitioners

Vs.

1.Shaji

2.The Junior Engineer,
Highways Department,
Kuzhithurai,
Kanyakumari District.

3.The State of Tamil Nadu,
Represented by the District Collector,
Kanyakumari District,
Nagercoil.

4.P.Monikandan

5.Jenega Jebangalin

... Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 06.01.2015 passed in I.A.No.602 of 2014 in O.S.No.65 of 2014 on the file of the Principal District Munsif, Kuzhithurai.



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For Petitioners : Mrs.J.Anandhavalli

For R-1 : Mr.N.S.Ramakrishna Dass

For R-2 & R-3 : Mr.P.T.Thiraviyam
Government Advocate

For R-4 & R-5 : Dispensed with

ORDER

This Civil Revision Petition has been filed by the fifth defendant in O.S.No.65 of 2014 as against the order passed by the learned Principal District Munsif, Kuzhithurai in I.A.No.602 of 2014. For the sake of convenience, the parties herein are referred as arrayed in I.A.No.602 of 2014 in O.S.No.65 of 2014, on the file of the Principal District Munsif Court, Kuzhithurai.

2. The petitioners herein are the plaintiff in the original suit and the I.A.No.602 of 2014 was preferred by the petitioner / fifth defendant seeking to re-issue the warrant and the Commissioner in I.A.No.602 of 2014 was directed to measure, locate and prepare a plan of the suit property with the Assistance of a Taluk Surveyor and the same was



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allowed by the Trial Court. As against the same, the plaintiff is before this Court.

3. The suit was one for demarcation and restoration of the eastern boundary of suit property and injunction against the defendants from trespassing into the suit property. An Advocate Commissioner R.V.Suriakumary was appointed in I.A.No.602 of 2014.

4. On a perusal of records of this Court, it is seen that the said Advocate Commissioner along with a qualified surveyor had visited the suit property on 31.03.2014 and had inspected the suit property, measured the same and duly executed warrant by filing a Commissioner's Report on 09.07.2014. Thereafter, this I.A.No.602 of 2014 was filed by the fifth defendant seeking to re-issue the warrant to the same Commissioner for the purpose of inspecting and measuring the property with the aid of the Taluk Surveyor.



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5. Heard Mrs.J.Anandhavalli, learned Counsel appearing for the petitioner, Mr.N.S.Ramakrishna Dass, learned Counsel appearing for the first respondent and Mr.P.T.Thiraviyam, learned Counsel appearing for the second and third respondents. The learned Counsel for the petitioner has already dispensed with this Civil Revision Petition as against the respondents 4 and 5 vide memo dated 20.06.2022.

6. The learned Counsel for the petitioner vehemently submitted that the fifth defendant was impleaded as one of the defendants in the plaint only because of the reason that the other defendants demolished the eastern compound wall at the instance of the fifth defendant. Other than that, there is no dispute between the plaintiff and the fifth defendant. The Commissioner's Report would reveal that when the Commissioner appointed in I.A.No.602 of 2014 inspected the suit property, the fifth defendant's counsel and the fifth defendant were present. However, they have not made up their mind to give any memo to the said Commissioner. Even after filing of the Commissioner's Report, none of the defendants filed any objection to the said report. Hence, the



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Commissioner's Report held to be in accordance with law. Without filing any objection to the said report and also having not taken any steps to set aside the said Commissioner Report, the fifth defendant, who did not even come forward to give any memo seeking any points for consideration to the Commissioner ought not to have come with a fresh I.A seeking to measure the plaint schedule property with the aid of Taluk Surveyor. The Commissioner has already duly executed the warrant and when the parties to the suit did not file any objection to the said Commissioner Report, this Court is of the considered view that I.A.No. 602 of 2014 is an unnecessary exercise, filed at the instance of the fifth defendant.

7. The learned Counsel for the second and third defendants fairly submitted that the physical features of the plaint scheduled properties are already measured by a qualified surveyor, namely, Mr.Sree Kumar. The learned Counsel for the petitioner and the respondents further submitted that the eastern side compound wall was damaged. According to the learned Counsel for the second and third respondents, the said damaged



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portion was demolished, since it was an encroachment. However, he fairly conceded that neither his Trial Court lawyer nor the fifth defendant have made any objection to the Commissioner's report nor filed any petition to set aside the said Commissioner's Report. Having not made any objection to the Commissioner's report, the petitioner has no *locus standi* to seek to re-issue the warrant to the Advocate Commissioner again.

8. In view of the same, this Court is of the considered opinion that the Trial Court ought not to have allowed the I.A in I.A.No.604 of 2014 in O.S.No.65 of 2014, on the file of the Principal District Munsif Court, Kuzhithurai. Hence, the order passed by the learned Trial Court is set aside and the I.A.No.604 of 2014 is dismissed. In the result, this Civil Revision Petition stands allowed. There shall be no order as to costs.

30.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
BTR



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Highways Department,
Kuzhithurai,
Kanyakumari District.
- 2.The District Collector,
The State of Tamil Nadu,
Kanyakumari District,
Nagercoil.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

BTR

Order made in
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