



C.R.P.(MD) No.2278 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2023

CORAM

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

C.R.P.(MD) No.2278 of 2023

and

C.M.P.(MD) No.11731 of 2023

K.Dhanasekaran

... Petitioner

Vs.

1.The Secretary of Executive Committee,
Saraswathi Primary School,
Puttur Village, Rajapalayam Taluk,
Virudhunagar District.

2.The Headmaster of Executive Committee,
Saraswathi Primary School,
Puttur Village, Rajapalayam Taluk,
Virudhunagar District.

... Respondents

Prayer:- This Civil Revision Petition filed under Article 227 of the Constitution of India to direct the Principal District Munsif Court, Rajapalayam to grant all the reliefs to the petitioner as prayed for in I.A.No.2 of 2023 in I.A.No.1 of 2019 in O.S.No.263 of 2019 by modifying the order and decreetal order dated 31.03.2023.

For Petitioner : Mr.K.Sudalaiyandi



C.R.P.(MD) No.2278 of 2023

WEB COPY

ORDER

This Civil Revision Petition has been filed by the petitioner to direct the Principal District Munsif Court, Rajapalayam to grant all the reliefs to the petitioner as prayed for in I.A.No.2 of 2023 in I.A.No.1 of 2019 in O.S.No.263 of 2019 by modifying the order and decretal order dated 31.03.2023.

2. The suit in O.S.No.263 of 2019 was filed by the petitioner along with other plaintiffs for the relief of declaration and for permanent injunction. During the pendency of the above suit, the plaintiffs filed I.A.No.1 of 2019 for appointment of an Advocate Commissioner to inspect and measure the property of the plaintiffs and the defendants with the help of the Surveyor and to file a report. The said application was allowed on 24.03.2022 and the Commissioner was appointed to inspect the suit property with the help of a qualified Surveyor and VAO based on both side documents and revenue records and note down the physical features and file the report.

3. The Advocate Commissioner has inspected the suit property along with a Surveyor and VAO on 14.05.2022 and filed a report. In the report, the Advocate Commissioner has mentioned that only local inspection was



C.R.P.(MD) No.2278 of 2023

conducted and no survey was conducted as the Surveyor and VAO were not able to identify the survey stone. In the report, the Advocate Commissioner has further stated that on the assumption that the survey stone may be within the compound of the defendants School, when the Surveyor and VAO approached the defendants School Committee for finding out the survey stone and zero point, they did not open the school gate and therefore, the Surveyor and VAO gave a Memo to the Advocate Commissioner stating that an additional Surveyor is required to survey the suit property.

4. Thereafter, the petitioner filed I.A.No.2 of 2023 in I.A.No.1 of 2019 in O.S.No.263 of 2019 for appointment of another Advocate Commissioner along with VAO and two Surveyors to inspect the suit property and also to break open the school gate if the respondents/defendants refused to open the lock. In the said application, the respondents/defendants made endorsement 'no counter'. The Trial Court allowed I.A.No.2 of 2023 in I.A.No.1 of 2019 in O.S.No.263 of 2019 in a routine manner without giving a specific direction to conduct inspection by the Advocate Commissioner along with two Surveyors and also to break open the gate. Aggrieved by this, the petitioner filed the present Civil Revision Petition.



C.R.P.(MD) No.2278 of 2023

5. The learned counsel for the petitioner would submit that no survey was conducted on the reasons that a single surveyor was not able to identify the survey stone and therefore, the Trial Court ought to have given specific directions to the Advocate Commissioner to inspect the suit property along with two Surveyors and to break open the respondents/defendants school gate if the respondents/defendants refused to open the gate during the inspection.

6. It is submitted that even though the application filed by the petitioner for appointment of another Advocate Commissioner was allowed, it is not sufficient to come to a conclusion. The learned counsel for the petitioner would pray for a direction to the Trial Court to grant all the reliefs to the petitioner as prayed for in I.A.No.2 of 2023 in I.A.No.1 of 2019 in O.S.No.263 of 2019 by modifying the order and decreetal order dated 31.03.2023.

7. Heard the learned counsel for the petitioner. Perused the records.

8. In I.A.No.1 of 2019, the petitioner and the other plaintiffs sought for appointment of an Advocate Commissioner to inspect the suit property and note down the physical features of the suit property with the help of VAO and Surveyor. The same was allowed. The VAO and the Surveyor were not able to



C.R.P.(MD) No.2278 of 2023

identify the survey stone. In the report filed by the Advocate Commissioner, it has been mentioned that it is unable to find out the survey stone for the reasons that the survey stone was situated within the compound of the respondents/defendant school and the respondents/defendants failed to open the school gate in order to find the survey stone.

9. Therefore, the petitioner filed I.A.No.2 of 2023 for appointment of the second Advocate Commissioner to inspect the suit property with the help of two Surveyors and VAO and to break open the school gate if the respondents/defendants refused to open the school gate during the inspection. The said I.A.No.2 of 2023 was allowed without any specific direction.

10. This Court is of the view that without scrapping the earlier report, the appointment of the second Advocate Commissioner to inspect along with two Surveyors and VAO cannot be entertained. The petitioner can file an application for supplementary report if any discrepancies/deficiencies are found in the earlier report. The petitioner is therefore at liberty to file an application before the Trial Court for supplementary report of the said Advocate Commissioner. Therefore, there are no merits in the present Civil Revision Petition.



WEB COPY



C.R.P.(MD) No.2278 of 2023

K.GOVINDARAJAN THILAKAVADI, J.

jen

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

11.09.2023

Internet : Yes/No

NCC : Yes/No

jen

To

The Principal District Munsif,
Rajapalayam.

C.R.P.(MD) No.2278 of 2023
and C.M.P.(MD) No.11731 of 2023