



C.R.P.(MD).No.2336 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.2336 of 2018

and

C.M.P(MD) No.10394 of 2018

Kannappan

... Petitioner/Petitioner/
Defendant

-vs-

Ramakrishnan

... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.76 of 2016 in O.S.No.306 of 2013 on the file of the District Munsif Court at Kumbakonam, dated 22.10.2016.

For Petitioner : Mr.M.R.S.Prabhu

For Respondent :Mr.N.Balakrishnan



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ORDER

The present Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.76 of 2016 in O.S.No.306 of 2013 on the file of the District Munsif Court at Kumbakonam, dated 22.10.2016.

2. The petitioner herein is the defendant and the respondent herein is the plaintiff before the Court below.

3. For the sake of convenience, the parties will be referred to as per the litigative status before the trial Court.

4. It is the submission of the learned counsel for the petitioner that the respondent has filed the suit for injunction in respect of the property situated in R.S.No.218/37 and R.S.No.218/38. Wherein, at the time of filing the suit, sought for an appointment of Commissioner in I.A.No.641 of 2013. It is the further submission of the learned counsel for the petitioner that, when the Surveyor has visited the property, he has referred to certain R.S.numbers and



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he has also referred to certain physical features with reference to the survey numbers.

5. The learned counsel for the petitioner further submits that they have filed an objection to the Commissioner's report. Wherein they have stated that as to how an Advocate Commissioner without having the assistance of the Surveyor would identify the exact layout and the physical features with reference to the survey number. Hence, the learned counsel for the petitioner would submit that the very Commissioner's Report cannot be relied, and only by re-issuing warrant of Commission along with the assistance of the Surveyor, the statement of the Advocate Commissioner can be validated.

6. However, the learned counsel for the respondent would submit that the Court below, after going into various aspects, and after considering that this is only a suit for permanent injunction, and upon the ground of delay, has dismissed the application. Therefore, there is no justification to interfere in the order of the learned trial Judge.



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7. This Court has given anxious consideration to the submissions of the learned counsel on either side.

8. No doubt, the delay in filing the application cannot be a reason when there is justification in appointment of Commissioner. In this case, it is nobody's case that the appointment of the Commissioner is not necessary and irrelevant. That is why the petitioner, himself has filed an application for appointment of Commissioner. Now that, the grievance of the respondent is that the Advocate Commissioner has referred to certain physical features with reference to the survey number and such details cannot be relied upon without the report of the Surveyor.

9. The very argument of the learned counsel for the petitioner is sound and rational. Because unless the assistance of the Surveyor, it is too difficult, or in fact, impossible for the Advocate Commissioner to refer the physical features with reference to the survey number. Only with the survey plan the physical features with reference to the survey number could be elicited properly.



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10. Therefore, this Court is of the view that the very prayer sought for by the petitioner/defendant for re-issuing of warrant of Commission along with the assistance of the Surveyor is justifiable. However, on perusal of the order, the learned trial Judge dismissed the application on the ground of delay. No doubt, because of the delay, the petitioner would have faced some hardship. Therefore, this Court is inclined to compensate the hardship of the respondent by imposing cost, while allowing the revision petition.

11. In the result, this Civil Revision Petition is **allowed** on condition that the petitioner shall pay a sum of Rs.3,000/- (Three Thousand only) to the respondent herein within a period of four weeks from the date of receipt of a copy of this order. On payment of cost, the learned trial Judge is directed to re-issue warrant of Commission with the assistance of the Taluk Surveyor. Since the matter is pending in the part heard stage, on re-issuance of warrant, the Advocate Commissioner is directed to submit the report within a period of four weeks. Further in order to proceed with the warrant of Commission with the assistance of the Surveyor, expeditiously, the learned Advocate Commissioner is permitted to show this order before the concerned authority to get the assistance of the appropriate Surveyor within the time frame. On



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filing of the Commission's Report, the Court below is directed to dispose of the matter within a period of four months from the date of filing of the Commissioner's report. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

07.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The District Munsif Court,
Kumbakonam,



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C.KUMARAPPAN,J.

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