



C.R.P(MD)Nos.1553 of 2018 etc.,

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2023

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)Nos.1553 of 2018 and 2104 of 2022

and

C.R.P(MD)Nos.6796 of 2018 and 9715 of 2022

C.R.P(MD)No.1553 of 2018

Bharat Heavy Electricals Limited,
Trichirappalli -14,
Represented by its General Manager (Admin)
Thiruverumbur,
Tiruchirappalli -14.

...Petitioner/Petitioner/
2nd Defendant

Vs.

1.S.Govindaraju

...1st Respondent/
1st Respondent/Plaintiff

2.Kayambu

...2nd Respondent/
2nd Respondent/
1st Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 25.04.2018 in I.A.No. 140 of 2018 in O.S.No.157 of 2001 on the file of the learned I Additional District Munsif, Tiruchirappalli.



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C.R.P(MD)Nos.1553 of 2018 etc.,

For Petitioner : Mr.A.V.Arun
For R1 : Mr.H.Lakshmi Shankar
For Mr.T.Senthil Kumar
For R2 : No Appearance

C.R.P(MD)No.2104 of 2022

Bharat Heavy Electricals Limited,
Trichirappalli -14,
Represented by its General Manager (Admin)
Thiruverumbur,
Tiruchirappalli -14.

...Petitioner/Petitioner/
2nd Defendant

Vs.

1.S.Govindaraju

...1st Respondent/
1st Respondent/Plaintiff

2.Kayambu

...2nd Respondent/
2nd Respondent/
1st Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 26.08.2022 in I.A.No.1 of 2022 in O.S.No.157 of 2001 on the file of the learned I Additional District Munsif, Tiruchirappalli.

For Petitioner : Mr.A.V.Arun
For R1 : Mr.H.Lakshmi Shankar
For Mr.T.Senthil Kumar
For R2 : No Appearance



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COMMON ORDER

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C.R.P(MD)No.1553 of 2018 has been filed against the fair and decreetal order in I.A.No.140 of 2018, binding in which the Court below has dismissed the application for appointment of an Advocate Commissioner.

2. The learned counsel for the petitioner submitted that the Commissioner was appointed in pursuance of the order in the second appeal in S.A.No.2452 of 2010, dated 17.09.2010. While measuring the suit property, they have not complied with the direction of this Court passed in S.A.No.2452 of 2010, and has not fixed the boundaries as directed by this Court. Which necessitated the petitioner to file the instant commission application.

3. However, the learned counsel for the respondents has strongly objected the contention of the petitioner, and would invite the attention of this Court in respect of the Surveyor report and Commissioner report, wherein, this Court could find that the Commissioner and Surveyor *prima facie* complied the directions of this Court passed in the second appeal.



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4. At this juncture, the learned counsel for the petitioner invite the attention in respect of the detailed objections filed to the Commissioner's report and the reasons assigned for filing the instant civil revision petitions for re-issuance of commission, to have a better technology of total station technology and to find out the exact lie of the property.

5. This Court is not in a position to agree with the contention of the learned counsel for the petitioner, since the Commissioner as well as the Surveyor has given a detailed report in respect of their measurement and their findings. Therefore, if at all the petitioner has any grievance over the Commissioner's report, they could very well cross examine the Commissioner. This Court is of the view that since because the report may not be the likings of the petitioner, there could not be a reason for re-issue of warrant and to have a fresh measurement of the property.

6. At this juncture, the learned counsel for the petitioner has invited the attention of another civil revision petition in C.R.P(MD)No. 2104 of 2022, wherein, the Court below has dismissed the application to recall C.W.1.



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7. This Court has perused the order passed in I.A.No.1 of 2022, wherein, the Court below has rejected the prayer of the petitioner on the ground of delay. However, on perusal of the record, during the relevant time, there is a civil revision petition pending before this Court from the year 2018. Therefore, the delay could not be a reason to reject the re-call of C.W.1.

8. Considering the peculiar facts and circumstances of this case, this Court is of the view that the order passed by the Court below in I.A.No.1 of 2022 is liable to be set aside and thereby this C.W.1 is ordered to be recalled..

9. Considering the long pendency of the suit, the learned Trial Judge is directed to dispose of the suit in O.S.No.157 of 2001 within a period of three months from the date of receipt of the copy of this order.

10. In the result, C.R.P.(MD)No.1553 of 2018 is **dismissed** and C.R.P(MD)No.2104 of 2022 is **allowed**. No costs. Consequently, connected miscellaneous petitions are closed.

09.08.2023

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



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- 1.The learned I Additional District Munsif,
Tiruchirappalli.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

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and 2104 of 2022

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