



C.R.P(MD)No.2555 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.08.2023

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.2555 of 2018
and
C.M.P(MD)No.11242 of 2018

Chinnasamy

...Petitioner/Petitioner/
Plaintiff

Vs.

Santhakumari (Died)

...1st Respondent/
1st Defendant

1.Baskara Pandian

2.Jeyameena

...Respondents/
Respondents 2 & 3/
Defendants 2 & 3

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.141 of 2018 in O.S.No.192 of 2014, dated 04.08.2018 on the file of the District Munsif Cum Judicial Magistrate Court No.1, Usilampatti.

For Petitioner : Mr.H.Arumugam

For R1 & R2 : Mr.D.Malaichamy



C.R.P(MD)No.2555 of 2018

ORDER

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The civil revision petition has been filed against the order passed by the District Munsif Cum Judicial Magistrate Court No.1, Usilampatti in I.A.No.141 of 2018 in O.S.No.192 of 2014, dated 04.08.2018.

2. The petitioner herein is the plaintiff and the respondents herein are the defendants 1 to 3 before the Court below.

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

4. It appears that the plaintiff has filed a suit for relief of permanent injunction and mandatory injunction. In the suit, he has also moved an application for appointment of Commissioner in I.A.No.665 of 2014 and that the Commissioner was also appointed. The Commissioner has also filed a report on 07.02.2016. It appears that thereafter, the petitioner herein has filed an application in I.A.No.141 of 2018 so as to re-issue of Commission on the ground that the earlier Commissioner's report is biased one and he has not mentioned the physical features of the property.



C.R.P(MD)No.2555 of 2018

5. After considering either side submission, the said application was dismissed by the Court below with the finding that the plaintiff has not filed any memo of objection and that he has not moved an application to scrap the earlier Commissioner's report, by referring the judgment of this Court in the case of ***Kittanammal Vs Nalla Selvam*** reported in **2005 (2) MLJ 227**.

6. Aggrieved with the order, the petitioner is before this Court.

7. The learned counsel for the petitioner submits that he has also moved an application in I.A.No.173 of 2019 so as to scrap the earlier Commissioner's report. Therefore, prayed that subject to the outcome of I.A.No.173 of 2019, he may be given a liberty to file fresh commission application. The said submission was also fairly conceded by the learned counsel for the respondents.

8. Having considered the submissions made by either side, this Court deem it appropriate to dismiss the instant civil revision petition. However, liberty is given to the petitioner to move a fresh commission application subject to the outcome of I.A.No.173 of 2019. In the event of filing such commission application, the Court below is directed to dispose of the same according to law. It is also made clear that the Court



C.R.P(MD)No.2555 of 2018

below is directed to proceed without being influenced by any of the observations made in this civil revision petition, while deciding I.A.No. 173 of 2019.

9. In the result, this civil revision petition stands **dismissed** with the liberty as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

14.08.2023

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

- 1.The District Munsif Cum
Judicial Magistrate Court No.1,
Usilampatti.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P(MD)No.2555 of 2018

C.KUMARAPPAN,J.

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C.R.P(MD)No.2555 of 2018

14.08.2023