



C.R.P.(MD)No.2760 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2760 of 2023

and

C.M.P.(MD)No.14364 of 2023

Mary Ajantha

... Petitioner/
Petitioner/
2nd Defendant

Vs.

1. Delcy Micheal

2. Merryston David Scanny

... Respondents/
Respondents/
Plaintiffs

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 20.09.2023 passed in I.A.No.7 of 2023 in O.S.No.137 of 2019 on the file of the Principal Sub Judge, Tirunelveli.

For Petitioner : Mr.V.Shathurthi Raja



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ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.07 of 2023 in O.S.No.137 of 2019 dated 20.09.2023 on the file of the Principal Subordinate Court, Tirunelveli, dismissing the petition for re-issuance of commission issued in I.A.No.841 of 2012.

2. The respondents/plaintiffs have filed a suit in O.S.No.137 of 2019 to declare that 4th schedule property belonged to them and for mandatory injunction for removal of the structures constructed in the portion of the 3rd schedule property more particularly described in the 4th schedule property.

3. It is seen from the records that an Advocate Commissioner was already appointed in I.A.No.841 of 2012 and after visiting the property, the Advocate Commissioner has filed a preliminary report as well as the final report. It is further evident that on the basis of the Advocate Commissioner's report and plan, the respondents/plaintiffs have amended the plaint and thereafter, the revision petitioner/second defendant and the other defendant have filed their written statement along with counter claim



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and that when the suit is pending for the defendants' side evidence, the above petition came to be filed.

4. As rightly observed by the learned trial Judge, re-issuance of commission was sought for to show that the respondents/plaintiffs by encroaching 3rd schedule property have put up a gate and barbed wire fencing. But as already pointed out, the respondents/plaintiffs have amended the plaint seeking mandatory injunction for removal of the constructions made in the 3rd schedule property and in pursuance of the same, the revision petitioner/second defendant has also filed their additional written statement.

5. As rightly observed by the learned trial Judge, since the Advocate Commissioner's report and plan are already available and that when the suit was pending for the defendants' side evidence, the above petition came to be filed after 8 years, the revision petitioner has been attempting to protract the proceedings and this Court is in entire agreement with the observation made by the learned trial Judge. Hence, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.



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6. In the result, this Civil Revision Petition is dismissed. However, since the suit is pending from 2019 onwards, the learned Principal Sub Judge, Tirunelveli, is hereby directed to complete the trial in O.S.No.137 of 2019 and dispose of the same as expeditiously as possible, preferably, within a period of four months from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

17.11.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Principal Subordinate Court,
Tirunelveli.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Order made in
C.R.P.(MD)No.2760 of 2023
and
C.M.P.(MD)No.14364 of 2023

Dated : 17.11.2023