



C.R.P.No.1220 of 2016

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.1220 of 2016

and

C.M.P.No.6696 of 2016

Shanmugam

..Petitioner

Vs.

1.Subramaniam

2.K.Kuppusamy

3.Rangasamy

4.Tamil Selvi

5.Sellammal

6.A.P.Palanivel

7.R.Sivaraman

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order made in I.A.No.1042 of 2015 in O.S.No.123 of 2011 on the file of the Principal District Musif, Namakkal.



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For Petitioner : Mr.S.Kalyanaraman

For Respondents : Mr.MA.P.Thangavel for R4 and R5

R1 to R3 and R6 to R8 – No appearance

ORDER

The order under challenge in this Revision is one dismissing the application filed by the petitioner to re-issue the warrant of commission to the Commissioner who had filed a report after 4 years from the date of his inspection, with a direction to consider the objection submitted by both the parties. The learned trial Judge has dismissed the application on the ground that the trial has commenced.

2. A perusal of the plaint and the written statement reveals that the suit relates to the right of passage and the existence of the passage itself is in dispute. In such case, the Commissioner's report assumes significance. From the report of the Commissioner itself it is found that the Commissioner has inspected the property on 25.06.2011, but has chosen to file a report on 20.04.2015 that is nearly after 4 years. This kind of delay on the part of the Advocate Commissioner is inexplicable.



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3. A perusal of the report and plan of the Commissioner show that they are totally unsatisfactory. The plan does not show the location of the lands of the plaintiff and the defendants separately. The report also does not contain a detail regarding measurements. Though it says that a plan containing measurements have been filed, the plan does not disclose any measurements.

4. Hence, I am convinced that the report of the Commissioner needs to be scrapped. The report of the Commissioner is scrapped and the order of the trial Court is also set aside and the trial Court is directed to appoint a new Commissioner with a direction to inspect the property and file a report within a specific period. The Court shall ensure that the person so appointed is a responsible Advocate who will file his report within time unlike the previous Commissioner.

5. Accordingly, this Civil Revision Petition is **allowed**. The trial Court will appoint a new Commissioner within a period of two (2) weeks from the date of receipt of a copy of this order with a direction to the Commissioner to file a report within a period of four (4) weeks there



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after. No costs. Consequently, the connected miscellaneous petition is closed.

22.01.2024

dsa
Index : No
Internet : Yes
Neutral Citation : No
Speaking order



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To

The Principal District Musif, Namakkal.

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R.SUBRAMANIAN,J.

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