



C.R.P.(PD).No.4426 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

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THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN, J.

C.R.P.(PD).No.4426 of 2024

and

C.M.P.No.24618 of 2024

Jaishankar

... Petitioner/Plaintiff

..Vs..

Vadivel

... Respondent/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, seeking to set aside the Fair and Final order dated 04.09.2024 made in I.A.No.3 of 2024 in I.A.No.223 of 2013 in O.S.No.72 of 2013 on the file of the District Munsif Court, Dharapuram.

For Petitioner	:	M/s. Vigneshwari For Mr.M.Guruprasad
For Respondent	:	Mr.N.Ponraj



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ORDER

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This Civil Revision Petition arises against the order passed by the learned District Munsif at Dharapuram in I.A.No.3 of 2024 in I.A.No.223 of 2013 in O.S.No.72 of 2013 dated 04.09.2024.

2. The Civil Revision Petitioner is the plaintiff in the suit. O.S.No.72 of 2013 is a suit for declaration of title, recovery of possession and for mandatory injunction with respect to the suit property purchased by the plaintiff on 23.09.2011 from the power agent of the defendant.

3. Pending the suit, the plaintiff took up an application in I.A.No.223 of 2013 seeking for appointment of an Advocate Commissioner to inspect the suit property and to submit a Report. The said application was pending for the period of nearly 7 years and it came to be allowed on 01.10.2020. An Advocate Commissioner visited the suit property and also submitted the Report on 08.03.2023. Not being satisfied with the Advocate Commissioner's Report, the plaintiff filed objection to the same. Thereafter, the plaintiff filed an application for reissue of a warrant of an Advocate



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Commissioner. The said application was received in I.A.No.3 of 2024. After receipt of a counter from the defendant, the learned District Munsif at Dharapuram dismissed the application. Hence the present Civil Revision Petition.

4. I heard the learned counsel M/s. Vigneswari for Mr.Guruprasad learned counsel appearing for the revision petitioner and Mr.N.Ponraj learned counsel appearing for the respondent.

5. It is unfortunate that an application for appointment of an Advocate Commissioner was kept pending for a period of 7 years and the Advocate Commissioner has filed a report 3 years, after the date of appointment. The delay in filing the report was further compounded by the plaintiff by not filing his objections in time. For the mere fact that the plaintiff is not satisfied with the Advocate Commissioner's Report, a Court cannot reissue the warrant for an Advocate Commissioner. The Court should come to the conclusion that the report of the Advocate Commissioner is defective and only thereafter, it should either reissue the warrant to the same



commissioner or scrap the report and appoint a fresh commissioner.

Therefore, the plea of the petitioner that since he is not satisfied with the report, there should be a reissue cannot stand scrutiny.

6. This Court in ***Vemba Gounder vs. Pooncholai Gounder [AIR 1996 Madras 247]*** case has laid down the procedure which the Court has to follow, when an objections filed to the report. The Court must look into the objections filed to the Advocate Commissioner's Report and thereafter decide whether the Advocate Commissioner's Report should be accepted or not. For the said purpose, the Court is empowered to examine the Advocate Commissioner by putting him in the witness box.

7. The petitioner having filed an objection to the report, the learned District Munsif at Dharapuram, shall receive the objections presented by the Civil revision petitioner and follow the directions of this Court in ***Vemba Gounder's*** case, in particular paragraph Nos.30 and 31 of the said judgment. It shall decide whether the Advocate Commissioner's Report deserves acceptance or has to be rejected. In case, it decides to accept the



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report of the Advocate Commissioner, then, it is open to the petitioner to work out his rights. Unless and until the procedure that has been set forth by this Court in **Vemba Gounder** case is strictly adhered to, the report of the Advocate Commissioner cannot be received. At the time of disposal of the application, as directed by this Court, the learned Trial Judge shall strictly adhere to the judgment of **Vemba Gounder**.

8. Therefore the Civil Revision Petition is disposed of with the following directions:

(i) The objections that have been filed by the plaintiff to the Advocate Commissioner's Report, which the Court is said to have returned on 07.10.2023 shall be received by the Court.

(ii) The Court shall peruse the Advocate Commissioner's Report along with the objections filed and decide whether the Report should be received in evidence or not.

(iii) Both parties may exercise the Commissioner, if, they so desire, to point out to the Court, the error in the Report.



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(iv) In case, if the Court comes to a conclusion that the Report requires to be revised, it shall either on an application of either parties or *suo motu* reissue the warrant to the commissioner.

9. With the above directions, the Civil Revision Petition stands disposed of. No costs. Consequently, the connected miscellaneous petition stands closed.

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Index : Yes
Internet : Yes
Neutral Citation Case: Yes/No



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