



C.R.P.(PD)No.4872 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 02.12.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4872 of 2024
and
CMP.No.27311 of 2024

Gowsunnisa

....

Petitioner

Vs

1. Annamal
2. The Village Administrative Officer,
Periyamampattu Village,
Thiyagathurangam Town,
Kallakurichi Taluk,
Kallakurichi district.
3. The Zonal Surveyor,
Thiyagadurgam Revenue Zonal,
Salem Main Road,
Revenue Inspector Office,
Pukkulam Colony Road,
Thiyagadurgam Town,
Kallakurichi Taluk,
Kallakurichi District.
4. The Revenue Tahsildar,
Tahsildar Office,
Kallakurichi Taluk,
Villupuram District.

5. The District Collector,

<https://www.mhc.tn.gov.in/judis>



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Villupuram District,
Villupuram.

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6. The Secretary,
Municipality Union Office,
Thiryagadurgam,
Kallakurichi Taluk,
Kallakurichi District.

7. The Assistant Director,
Municipality Office,
Manja Kuppam,
Cuddalore,
Cuddalore District.

.... Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order in I.A.No.71/2024 in O.S.No.195/2016 dated 01.07.2024 passed by the 1st Additional District Munsif, (FAC), Kallakurichi.

For Petitioner : Mr.T.Balachandran
For Respondents : Mr.J.Arunkumar (R2 to R7)
Additional Government Pleader

ORDER

This civil revision petition arises against the order of the learned 1st Additional District Munsif, (FAC), Kallakurichi, in I.A.No.71 of 2024 in O.S.No.195 of 2016 dated 01.07.2024.



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2. O.S.No.195 of 2016 is a suit filed for mandatory injunction to remove the encroachment made by the 7th defendant and for other consequential reliefs.

3. The Plaintiff claimed that the suit property is a pathway and that the defendants had obstructed the pathway constraining them to file a suit. The 7th defendant pleaded that he purchased the property, by way of registered Sale Deed, in the year 1998 from one Vengadajalapathy who had purchased the property from the previous owner one Arumugam Pandithan. Therefore, he pleaded title to the property. He stated that he had put up construction over the suit property and he is an absolute owner thereof. He added that he is in possession of the same and that he has secured electricity and water connection in his name.

4. Pending the suit, the plaintiff took out an application for appointment of Advocate Commissioner. The Advocate commissioner also surveyed the property and had submitted the report. No objections were filed either by the plaintiff or by the defendants to the report dated 07.12.2022. Thereafter, the 7th defendant's counsel was changed and she filed an application seeking for appointment of Advocate Commissioner to survey the very same property. The learned I Additional District Munsif dismissed the application and hence this



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WEB COPY 5. I heard Mr.P.Balachandran for the civil revision petitioner.

6. Mr.T.Balachandran pleads that the Advocate Commissioner who submitted a report on 07.12.2022 did not consider the Sale Deed of the 7th defendant and hence, the report is vitiated. It was in those circumstances that he filed an application for appointment of fresh Advocate Commissioner.

7. I also heard Mr.T.Arunkumar, learned Additional Government Pleader for the Respondents 2 to 7.

8. There cannot be two sets of Advocate Commissioner reports in the same suit. If a party wants to have the property surveyed again, the remedy for such a party is to file an application for reissuance, in case the job has not been properly done by the Advocate Commissioner. It is on record that the 7th defendant did not object to the Advocate Commissioner's report. Without an objection having been presented, there is no question of finding fault with the report of the Commissioner. The Advocate Commissioner has also not been examined during the course of the proceedings. Therefore, filing an application straightaway seeking for appointment of a second Advocate



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Commissioner is not maintainable.

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9. Since Mr.T.Balachandran pleads that he could not file objections to the Advocate Commissioner's report, the learned District Munsif shall give an opportunity to the petitioner/7th defendant to file objections and thereafter peruse the objections to the report. In case he comes to a conclusion that the objections made by the petitioner/D7 is valid, he shall pass appropriate orders, including reissuance of a warrant to the same Commissioner. Without an objection on record, the 7th defendant is not entitled to proceed further. Two weeks time, from the date of receipt of a copy of this order, is granted for the civil revision petitioner/7th defendant to file objections and to place his submissions before the learned Judge.

This civil revision petition is dismissed with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

02.12.2024

Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation:Yes/No
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V. LAKSHMINARAYANAN, J



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To

The I Additional District Munsif Court (FAC)
Kallakurichi.

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