



C.R.P(MD)No368 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

C.R.P(MD)No. 368 of 2024

and

C.M.P(MD)No.1712 of 2024

P.Kumar

...Petitioner

Vs.

1.G.Aloysius

2.The President of Village Panchayat,
Thanakkankulam,
Thirupparankundram Taluk,
Madurai District.

3.The Block Development Officer,
Thirupparankundram,
Thirunagar 2nd Bus Stop,
Block Development Office,
Thirupparankundram,
Thirupparankundram Taluk,
Madurai District.

4.The District Collector,
Madurai,
Collector Office,
Madurai District.

....Respondents



C.R.P(MD)No368 of 2024

WEB COPY

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to pleased to call for the records of fair and decreetal order made in I.A.No.5 of 2023 in O.S.No.211 of 2020 on the file of the Principal District Munsif Court, Thirumangalam, dated 01.11.2023 and set aside the same.

For Petitioner : Mr. R.Kannan
For R1 : Mr. A.L.Vijaydevaraj
For R2 : No appearance
For R3 and R4 : Mr.J.Ashok
Additional Government Pleader

ORDER

This Civil Revision Petition is filed to call for the records of fair and decreetal order made in I.A.No.5 of 2023 in O.S.No.211 of 2020 on the file of the Principal District Munsif Court, Thirumangalam, dated 01.11.2023 and set aside the same.

2. The suit in O.S.No.211 of 2020 is filed by the first respondent herein seeking the relief of permanent injunction and for



C.R.P(MD)No368 of 2024

WEB COPY

mandatory injunction to remove the building on the Southern portion and for cost. The defendant entered appearance and at the time of the final stage, a petition was taken out by the revision petitioner to appoint a fresh commissioner by scrapping the earlier report, that came to be dismissed by the trial Court by order dated 01.11.2023, against which this revision has been preferred.

3. The impugned petition is taken out by the revision petitioner stating the following facts: A commissioner was appointed in I.A.No.2 of 2023 to measure the suit property. The report was filed. Later he filed I.A.No.3 of 2023 to scrap the commissioner report and that was allowed. Later another application was filed by him in I.A.No.4 of 2023 again for measuring the property with the assistance of Assistant Director of Survey. The commissioner was appointed. The property was measured and report was also submitted to the commissioner. But report was not filed immediately by the commissioner instead, he arranged another Inspector of Survey without the permission of the Court. For what



C.R.P(MD)No368 of 2024

WEB COPY

reason, the commissioner engaged another Inspector of Survey is not known. The report of the surveyor dated 21.04.2023 was not taken into account by the Commissioner. So they suspect that the commissioner has not executed the work in a fair manner. That was resisted by the respondent by filing counter. After hearing the arguments, the trial Court dismissed the petition stating that unless the old report is struck off, another application will not lie.

4. Learned counsel for the revision petitioner would submit that as mentioned in the affidavit, the Commissioner, without permission of the Court, engaged the Inspector of Survey and filed the report without enclosing the report filed by the Director of Survey on 21.04.2023. That is his grievance.

5. Per contra, learned counsel for the respondent would submit that this is the third application filed by the petitioner. The first report submitted by the Commissioner was scrapped as mentioned in the preamble portion. Another commissioner was appointed again,



C.R.P(MD)No368 of 2024

WEB COPY

making some complaint. The impugned petition was filed by the revision petitioner, to struck off the report. According to him, one after another, applications are filed. If it is allowed, then there will be no end to the litigation.

6. Without going into the merits of the case, I am of the considered view that during the course of the trial process, the trial Court can consider the report on its own merits and in the opinion of the Court anything finds improper, then the Court on its own motion, can take further action either by reissuing the commission warrant or for appointing some other commissioner, if it is required for the just decision of the case. Repeated filing of applications, repeated scrapping of the commissioner reports, should be avoided. The grievance against the commissioner report must be addressed only during the course of trial in a proper manner. I find that the order passed in I.A.No.5 of 2023 in O.S.No.211 of 2020 by the Principal District Munsif Court, Thirumangalam, dated 01.11.2023, requires no interference.



C.R.P(MD)No368 of 2024

WEB COPY

7. With the above observation, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

22.03.2024

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

pnn

To

- 1.The Principal District Munsif Court, Thirumangalam.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.R.P(MD)No368 of 2024

G. ILANGO VAN, J.

pnn

C.R.P(MD)No. 368 of 2024
and
C.M.P(MD)No.1712 of 2024

22.03.2024