



C.R.P(MD)Nos.702 and 703 of of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGOVAN

C.R.P(MD)Nos.702 and 703 of 2024
and C.M.P. (MD)No.3663 of 2024

In both revisions:

Edwin Rubert

...Petitioner/Petitioner/2nd Defendant
Vs.

1.Leeli Robson

2.Lalitha Hepsibai

...Respondents/Respondents/Plaintiff & 1st Defendant

PRAYER in both petitions: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the common order and decree in I.A.Nos.8 and 9 of 2023 in O.S.No.123 of 2018 dated 30.01.2024 passed by the 2nd Additional Subordinate Court, Nagercoil.

In both revisions:

For Petitioner : Mr.P.T.Ramesh Raja

COMMON ORDER

These Civil Revision Petitions are filed to set aside the common order passed in I.A.Nos.8 and 9 of 2023 in O.S.No.123 of 2018 dated 30.01.2024 by the learned 2nd Additional Subordinate Judge, Nagercoil.



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2. Since opportunity is going to be given to the respondents before the trial court, these Civil Revision Petitions are taken up for final disposal at the admission stage itself by dispensing with notice to them.

3. The suit in O.S.No.123 of 2018 was filed seeking the relief of demarcation and to fix the boundary line for the suit schedule property as per partition deed dated 22.11.1966 and for consequential permanent injunction. A Commissioner was appointed and the Commissioner's report is also filed.

4. The learned counsel for the petitioner would submit that some mistake has been committed by the Commissioner in making his observation in the report. He would also submit that the Advocate Commissioner found that the petitioner is in possession of 7 ½ cents of land and the Commissioner has wrongly stated that the petitioner is entitled for 6.75 cents of land and the petitioner is encroaching 0.75 cents of land. Against the said finding, the



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petitioner filed two petitions. I.A.No.8 of 2023 is filed to re-open the case and I.A.No. 9 of 2023 is filed to condone the delay in filing objection petition. Both petitions came to be dismissed by the trial court stating that after completing cross-examination of witnesses when the matter is posted for argument of both sides these petitions are filed to nullify the examination of witnesses on the side of the plaintiff and the 1st defendant. Against which, the petitioner/2nd defendant is before this Court.

5. The learned counsel for the petitioner fairly submitted that with regard to the alleged finding, the Advocate Commissioner has not been examined by the parties before the trial court.

6. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

7. It is represented that trial has already completed and after examination of witnesses is over, the case is posted for argument.



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Only at that time, I.A.Nos.8 and 9 of 2023 have been filed. Since there is discrepancy in the Commissioner's report, the petitioner wants to file an objection and if the case is re-opened, at that time, the Commissioner could be examined.

8. Considering the above stated facts, I am of the view that unless the Commissioner is examined in this matter, the issue cannot be resolved finally. On that sole ground, I am inclined to set aside the common order passed in I.A.Nos.8 and 9 of 2023 in O.S.No.123 of 2018 dated 30.01.2024 by the learned 2nd Additional Subordinate Judge, Nagercoil. Accordingly, the same are set aside on condition that the petitioner shall pay a sum of Rs.5000/- (Rupees Five Thousand Only) to the respondent. The said amount shall be paid to the respondent within a period of one week from the date of receipt of a copy of this order.

9. The trial court is directed to examine the Advocate Commissioner and both parties are at liberty to cross-examine the



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Advocate Commissioner on the basis of his report and after that, the matter may be disposed of on its own merits.

10. In the result, these Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

18.03.2024

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

Note: Issue order copy on **18.03.2024**

To

1. The 2nd Additional Subordinate Court, Nagercoil.

2. The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J.

CM

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