



C.R.P(MD)No.930 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.10.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P(MD)No.930 of 2023

and

C.M.P(MD)No.4305 of 2023

Prasath

... Petitioner /
Petitioner /
1st Defendant

Vs.

1.M.C.Epronce

... 1st Respondent /
1st Respondent /
Plaintiff

2.Sunilkumar

... 2nd Respondent /
2nd Respondent /
2nd Defendant

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 19.01.2023 passed in I.A.No.3 of 2022 in O.S.No.185 of 2019 on the file of the Principal District Munsif Court, Kuzhithurai, Kanyakumari District by allowing this revision petition.



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For Petitioner : Mr.G.Ramanathan

For Respondents : Mr.Ananth C.Rajesh for R.1

ORDER

Heard both sides.

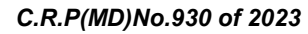
2.One Balakrishnan owned 98 cents of land. The plaintiff is said to have purchased a certain extent of land from the said Balakrishnan. Likewise, the defendants' vendor had also purchased the remaining extent from the very same Balakrishnan. Now dispute has arisen between the parties. The plaintiff filed O.S.No.185 of 2019 on the file of Principal District Munsif Court, Kuzhithurai for declaration and recovery of possession. In the said OS, the plaintiff filed an IA for appointing of an Advocate Commissioner. Advocate Commissioner was appointed and he has also submitted his report. The defendant no.1, the revision petitioner herein wanted reissuance of commission to the Advocate Commissioner. Hence he filed I.A.No.3 of 2022. It was dismissed vide order dated 19.01.2023. Challenging the same, this Civil Revision Petition came to be filed.



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3.I entirely agree with the contention of the learned counsel for the plaintiff that the revision petitioner missed the bus. He was very much present when inspection took place. He could have given a memo of instructions requesting the Advocate Commissioner to measure his property as per his document. He has not done so. Therefore the revision petitioner cannot claim that the report submitted by the Advocate Commissioner is defective for not having measured his property. But then, the Court below erred in dismissing the petitioner's IA on the ground that without scrapping the earlier report, reissuance of commission cannot be ordered.

4.The learned counsel for the petitioner draws my attention to the decision reported in **(2003) 3 MLJ 417 (K.Thangamuthu Vs D.Govindarajan & Another)** in which it has been held that only when a fresh commission is sought to be issued, duty is cast upon the Court to scrap the earlier report by giving reasons. For reissuing the Commission to the very same Advocate Commissioner, such a scraping need not be resorted to. He also drew my attention to another decision reported in **(2009) 1 MLJ 1334 (Kamala Devi Vs T.P.Manoharan)** on the same lines.



6. This Civil Revision Petition is allowed on these terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

25.10.2024

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

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The Principal District Munsif Court,
Kuzhithurai,
Kanyakumari.



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G.R.SWAMINATHAN, J.

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