



C.R.P.(MD)No.806 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.03.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.806 of 2019

and

C.M.P.(MD)No.4937 of 2019

Nainar

... Petitioner

Vs.

Venkada Subramanian
through his Power Agent
Athinarayanan

... Respondent

Prayer : This Civil Revision Petition filed under Article 227 of Constitution of India, to call for the records relating to the fair and decretal order made in I.A.No.6 of 2019 in O.S.No.88 of 2013 dated 14.02.2019 by the learned District Munsif Court, Thiruchendur and set aside and allow the Civil Revision Petition as prayed for.

For Petitioner : M/s.Nambi Nachiar
for Mr.V.Angusamy

For Respondent : Mr.M.P.Senthil



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ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.6 of 2019 in O.S.No.88 of 2013 dated 14.02.2019 on the file of the District Munsif Court, Tiruchendur, dismissing the application filed under Order 26 Rule 9 C.P.C.

2. The respondent as plaintiff has filed the above suit claiming declaration that the order passed by the second defendant dated 06.08.2010 is null and void and consequentially restraining the exercising of that order passed by the second defendant. The revision petitioner, who is the fourth defendant, has filed a written statement and is contesting the suit. After the completion of evidence on both the sides and when the case was pending for arguments, the revision petitioner has filed the present application seeking appointment of Advocate Commissioner for inspecting the suit property and to note down the physical features and to file a report and sketch. The respondent has filed a counter statement raising serious objections. The learned District Munsif, after enquiry, has passed the impugned order dated 14.02.2019 dismissing the commission application. Aggrieved by the order of dismissal, the present revision came to be filed.



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3. It is seen from the records that the family members of the revision petitioner have already filed a suit in O.S.No.852 of 1995 for declaration and recovery of possession with regard to the suit property and the same was dismissed and admittedly, since there was no appeal, the above judgment has attained finality.

4. The learned counsel appearing for the respondent would submit that in the earlier suit in O.S.No.852 of 1995, Advocate Commissioner was appointed and he filed his report and plan noting down the physical features in the suit property. The learned trial Judge, by specifically observing that there is no dispute with regard to identity of the property and that the revision petitioner has not canvassed any valid reasons or grounds for appointment of Advocate Commissioner in the present suit, has dismissed the said application. Moreover, the learned trial Judge has specifically observed that though the case was pending from 2013 and when the case was pending for arguments, the above application came to be filed only to drag on the proceedings.

5. Considering the facts and circumstances, the impugned order dismissing the application cannot be found fault with. Hence, this Court



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concludes that the revision is devoid of merit and the same is liable to be dismissed.

6. In the result, this Civil Revision Petition is dismissed. However, since the suit is pending from 2013 onwards, the learned District Munsif, Tiruchendur, is directed to complete the trial in O.s.No.88 of 2013 and dispose of the same within a period of two months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

12.03.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

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



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K.MURALI SHANKAR,J.

csn

Order made in
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and
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Dated : 12.03.2024