



C.R.P.(MD)No.1286 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 06/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CRP (MD) No.1286 of 2023

and

CMP (MD) No.6316 of 2023

K.Kamaraj : Petitioner/Petitioner/
Plaintiff

Vs.

1.Savithri
2.R.Jeyanthi
3.Ramadoss

4.The Commissioner,
Palani Municipality,
Palani, Dindigul District.

5.The District Collector,
Dindigul District. : Respondents/Respondents/
Defendants

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in IA No.6 of 2023 in OS No.13 of 2017 on the file of the District Munsif Court, Palani, dated 07/03/2023 and pass such further or other orders.

For Petitioners : Mr.N.Adithya Vijayalayan
for Mr.D.Venkatesh

For 1st Respondent : Died

For R2 and R3 : Mr.R.R.Kannan

For 4th Respondent : No appearance

For 5th Respondent : Mr.J.Ashok
Additional Government Pleader



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O R D E R

This civil revision petition is filed seeking to set aside the fair and decreetal order, dated 07/03/2023 passed in IA No.6 of 2023 in OS No.13 of 2014 by the District Munsif, Palani.

2.The facts in brief:-

Suit in OS No.13 of 2017 is filed by the petitioner herein as plaintiff seeking the relief of declaration that the suit pathway belongs to him and the defendants 1 to 3 commonly; and for consequential mandatory injunction directing the defendants to remove the superstructure put up in the disputed property; consequential injunction, etc. The defendants filed their written statement. Pending process, IA Nos.32 of 2017 and 2 of 2019 were taken out by the plaintiff himself to note down the physical features and file a report. Those petitions were allowed, the Commissioner inspected the property and filed a report. Finding that there is difference between the Commissioner report and the physical feature of the suit property, they filed IA Nos.32 of 2017 and 2 of 2019. Another application was taken out in IA No.5 of 2022. That was dismissed, on 07/12/2022. Since because two reports are contradictory in nature, both reports must be scraped and another Commissioner must be appointed.



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3.That was resisted by the respondents stating that in the first report, the measurement was taken all the properties belong to the third respondent as well as the southern property to the plaintiff's house. Proper objection was filed by them. So again the Commissioner was appointed in IA No.2 of 2019. In the second report, proper measurement was taken. The report was filed without any defects.

4.The trial court, after hearing both sides, dismissed the application on the ground that there is long delay of five years in making the objection. It is also found that there is no defect in the Commissioner's report. It partly allowed the petition scraping the report filed IA No.32 of 2017, but rejecting the prayer in respect of the report filed in IA No.2 of 2019.

5.Against which, this civil revision petition is preferred.

6.Heard both sides.

7.The suit is of the year 2017. The disputed property is the alleged common pathway between the plaintiff and the defendants.



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8.It is the case of the plaintiff that in the common pathway, the defendants made encroachment. That encroachment must be removed. To find out the actual measurement of the properties, more than one surveys were undertaken by the Commissioner. IA No.32 of 2017 was filed along with the plaint. Another Commissioner was appointed in IA No.2 of 2019. Since because, there is difference between the earlier report and the subsequent report, another IA No.5 of 2022 was taken out to measure the property with the help of the surveyor. That was also dismissed, on 07/12/2022. No further process was taken by the parties. Now all of a sudden, after a long time, this petition came to be filed.

9.The trial court was of the view that the earlier report filed in IA No.32 of 2017 is not proper. No measurement was taken. But subsequent report, measurement was taken and found no defects. This is totally a factual issue.

10.Now the grievance of the petitioner is that in IA No.2 of 2019, the Commissioner even though referred the documents of both parties, failed to take down the measurement with regard to the title document. He is also referring to the report submitted in both occasions.



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11. So the question that to be decided by the trial court is as to the availability of the common pathway, its measurement and encroachment or construction, if any.

12. No doubt that for deciding this issue namely with regard to the construction and measurement of the common pathway, the report of the Advocate Commissioner is necessary. But whether the measurement ought to have been taken by the Commissioner with reference to the title document of both parties is a matter for consideration by the trial court.

13. Whether any direction was given by the trial court to the Commissioner to take out the measurement with reference to the title document of the parties is not clear on record.

14. Similarly, any memorandum of instructions were give by the parties to the Commissioner in this regard is also not clear on record. Even though, we take that the Commissioner filed the report, without measuring the properties with reference to the title document, during the course of evidence, that must be brought on record. During the course of the evidence only, the discrepancy must be brought to the notice of this court. For that



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purpose, the Commissioner must be examined as a witness.

So this is too a premature stage to say that the Commissioner's report is either defect or proper in nature.

15.As mentioned above, it depends upon the evidence to be adduced by the parties and the Commissioner himself. If during the course of the evidence, the trial court finds that proper measurement was not taken by the Commissioner, then the appellate court is at liberty to re-issue the Commissioner warrant to the very same Commissioner and if the trial court finds, the matter can be disposed, on the basis of the available report and evidence.

16.So, I am of the considered view that repeated filing of the applications for appointment of Commissioner, re-appointment, scraping will only cause delay in the litigation process. So, this must be avoided. Even though, the suit was filed in the year 2017, even after a lapse of 7 years, it could not be concluded because of this issue.

17.I find absolutely no reason to entertain this revision. But however, the above said issue is left open to the trial court to be decided at the time of evidence.



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18. With the above said liberty, this civil revision petition stands **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

06/03/2024

Index: Yes/No
Internet: Yes/No
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To,

1. The District Munsif,
Palani.
2. The Commissioner,
Palani Municipality,
Palani, Dindigul District.
3. The District Collector,
Dindigul District.
4. The Additional Government Pleader,
Madurai Bench of Madras High Court,
Madurai.
5. The Section Officer,
ER/VR section,
Madurai Bench of Madras High Court,
Madurai.



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