



CRP(MD)No.1577 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08/03/2024

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

CRP (MD) No.1577 of 2022

and

CMP (MD) No.6773 of 2022

K.Seetharaman : Petitioner/Petitioner/
1st Respondent/1st Defendant

Vs.

1.K.Kamatchiappan : 1st Respondent/1st Respondent/
Petitioner/Plaintiff

2.The Commissioner,
Chinnamanur Municipality,
Chinnamanur,
Uthamapalayam Taluk,
Theni District. : 2nd Respondent/2nd Respondent/
2nd Respondent/2nd Defendant

PRAYER:-Criminal Original Petition has been filed under Article 227 of the Constitution of India, to set aside the order, dated 12/03/2021 passed in IA No.379 of 2020 in IA No.893 of 2018 in OS No.95 of 2018 on the file of the District Munsif Court, Uthamapalayam.

For Petitioner : Mr.P.Arun Jayatram

For 1st Respondent : Mr.K.Guhan

For 2nd Respondent : No appearance



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O R D E R

WEB COPY This criminal original petition has been filed seeking to set aside the order, dated 12/03/2021 passed in IA No.379 of 2020 in IA No.893 of 2018 in OS No.95 of 2018 by the District Munsif Curt, Uthamapalayam.

2.The facts in brief:-

Suit in OS No.95 of 1981 was filed by the 1st respondent herein as plaintiff seeking the relief of mandatory injunction directing the 1st defendant herein to remove the iron gate put up in the northern side of the common pathway and for permanent injunction and for costs. Pending further process, a petition was taken out by the plaintiff for appointment of Commissioner to measure the property. That was allowed by the trial court and the Commissioner inspected the suit property, measured the same and filed a report. After that, this petition is taken out by the 1st defendant namely the petitioner herein in IA No.379 of 2020 with the following averments:-

"The Commissioner was directed to measure the property in Survey Nos.566/2 and 571/1. Along with the Surveyor, the Commissioner visited the property and trying to measure the same on 27/07/2019 against the



court order. The Commissioner started measuring the property from the northern and southern street without fixing the survey stones in Survey Nos.566/2 and 571/1. On the other day, the 1st defendant filed a memo to the Commissioner to measure the property and fix 20 feet pathway. The Commissioner also instructed the Surveyor to measure the property. But the Surveyor stated that original survey numbers were sub-divided into various sub- divisions, so could not measure the property, the Commissioner also filed the report without taking into account the objection made by the petitioner/1st defendant. To scrap the report, that petition was filed.

3.That was resisted by the respondents 1 and 2 by filing separate counters.

4.After hearing both sides, the trial court was of the view that at the time of making the measurement, the petitioner/1st defendant did not produce the title document, in spite of request made by the Commissioner. Because of the indifferent attitude of the petitioner, the report was filed on the basis of the measurement. But however, liberty was granted to the petitioner to file a fresh petition to re-issue warrant of the Commissioner.



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

6. Heard both sides.

7. The main grievance of the petitioner is that the property was not measured with reference to the title document.

8. The issue between the parties is the existence or non-existence of 20 feet pathway. Whether it exists on the land or not is a matter for consideration by the trial court. But it is true that the property ought to have been measured with reference to the title document of both parties. But that could not be carried on, because of the attitude of the petitioner. He would have handed over the title document to the Commissioner with a request to measure the property as per the title document. Having failed to hand over the document, now this petition has been filed seeking to scrap the Commissioner report. Whatever objection, the petitioner has got can be made before the trial court at the time of trial. If the trial court feels that re-issue of Commissioner warrant is required for measuring the properties with reference to the title document, then the



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petitioner is at liberty to move the trial court. Since already that liberty was granted to him, I find no reason to entertain the petition.

9.In the result, this civil revision petition is **dismissed.** No costs. Consequently, connected Miscellaneous Petition is closed.

08/03/2024

Index:Yes/No
Internet:Yes/No

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To,

- 1.The District Munsif,
Uthamapalayam,
Theni District.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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