



C.R.P(MD)No.2066 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.2066 of 2019
and
C.M.P(MD)No.10629 of 2019

P.K.Geetha Ramalakshmi

... Petitioner/Petitioner
2nd Defendant

Vs.

1.T.S.Ramanan,
Represented by Power Agent,
P.N.Baskar Raja.

... 1st Respondent/1st Respondent
Plaintiff

2.N.S.Vasanth

3.Ramakrishnan

4.S.R.Kumarasamy Raja

5.The Secretary,
Q.330, Rajapalayam Co-operative House
Building Society Limited,
Having office at
P.S.K.Nagar,
Rajapalayam.

... Respondents 2 to 5/Respondents 2 to 5
Defendants 1, 3 to 5



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PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition with costs by setting aside the order, dated 25.09.2019 passed in I.A.No.67 of 2019 in O.S.No.72 of 2014 on the file of the Additional District Court, Srivilliputtur.

For Petitioner : Mr.S.Venkatesh
For R-1 : Mr.K.Jagadeesan
For R-2 to R-4 : No appearance
For R-5 : Mr.C.Satheesh
Government Advocate

ORDER

The present Civil Revision Petition has been filed by the second defendant in O.S.No.72 of 2014 on the file of the Additional District Court, Srivilliputtur, challenging an order passed by the Trial Court wherein the request of the petitioner for re-issuance of warrant to the same Commissioner has been rejected.



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2. The first respondent herein as plaintiff has filed a suit for declaration of title, recovery of possession and mandatory injunction. At the instance of the plaintiff in I.A.No.414 of 2014, an Advocate Commissioner was appointed to note down the physical features, especially the constructions and structures erected by the defendants in the suit property. The Commissioner had filed a report on 28.10.2015. The second defendant had filed his objections to the Commissioner's report on 23.11.2015. The objections filed to the Commissioner's report reveals that the petitioner has got some grievance over the Commissioner's report and he has requested for re-issuance of warrant to the same Advocate Commissioner. However, for reasons best known, the revision petitioner kept quite for nearly four years and thereafter, filed I.A.No.67 of 2019 seeking re-issuance of warrant to the same Commissioner on the ground that, he has not noted down the age of the building with the help of a Structural Engineer.



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3. The Trial Court after considering the submissions made on either side had dismissed the said application on the ground that the second defendant has filed the said application with a huge delay and the same has been filed only to drag on the proceedings. Challenging the same, the present revision petition has been filed.

4. According to the learned Counsel appearing for the revision petitioner, there is a prayer for recovery of possession as well as for mandatory injunction. According to the defendants, constructions were put up three years prior to the filing of the suit and therefore, it is very much essential to find out the age of the building and the same can be found out only with the help of a Structural Engineer. The Commissioner's report was not able to identify the age of the building. Unless the warrant is re-issued to the same Commissioner along with the Structural Engineer, the age of the building could not be found out.



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5. Per contra, the learned Counsel appearing for the respondents had contended that the application has been filed in a belated stage. Hence, the Trial Court has dismissed the said application and the same does not warrant any interference at the hands of this Court.

6. I have carefully considered the submissions made on either side and perused the materials available on record.

7. The Advocate Commissioner has filed his report on 28.10.2015. Promptly the second defendant had filed his objections to the Commissioner's report on 23.11.2015. Thereafter, he has filed a written statement on 04.02.2016. However, after waiting for a period of four years, I.A.No.67 of 2019 has been filed seeking to re-issue the warrant. As regards, the entitlement of the plaintiff to seek for mandatory injunction is concerned, the entire burden is upon him to establish the date on which the constructions were made. Therefore, at the instance of the defendants, it is not necessary to re-issue the warrant to the same Commissioner. Therefore, the Trial Court was right in dismissing the



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said application on the ground that the same has been filed to drag on the proceedings. There are no merits in the present Civil Revision Petition.

8. In the result, this Civil Revision Petition stands dismissed.

There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

03.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The Additional District Court,
Srivilliputtur.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Order made in
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