



CRP(MD).No. 2510 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2024

CORAM :

THE HON'BLE MR JUSTICE G.ILANGOVAN

CRP(MD).No. 2510 of 2023 and
CMP(MD).No.13052 of 2023

Perumal Raj(died)

Nagoor Meerasha

Vs.

Petitioner

Subramanian

Respondent

PRAYER : Petition filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 06.07.2023 made in I.A.No.1 of 2022 in O.S.No.140 of 2009 on the file of the Principal District Munsif Court, Musiri.

For Petitioner : Mr.G.Sridharan

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order, dated 06.07.2023 made in I.A.No.1 of 2022 in O.S.No.140 of 2009 on the file of the Principal District Munsif Court,



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Musiri.

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2. At the time of moving the plaint, expert Commissioner was appointed and he has made a spot visit and filed primary report noting down the direction made by the respondent herein. After that the Commissioner was appointed as Judicial Officer so final report was not filed by him and that the matter was kept pending without any progress. Now, at this stage, before the commencement of trial the application was taken out by the petitioner to reopen the above said Commission petition and re-issue the summon to some other Commissioner that came to be dismissed by the trial Court stating that after a lapse of time fresh Commissioner cannot be appointed.

3. The learned counsel for the revision petitioner submitted that since the suit itself has been filed for declaration and mandatory injunction and for removal of alleged encroachment, unless the report is filed by appointing an Advocate Commissioner, the adjudication cannot be made by the trial Court leaving the technicality issues involved, that the Commissioner report is required for assessing the ground situation. On the basis of sole ground, the order passed by the learned Principal



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District Munsif, Musiri is set aside. The trial Court is directed to appoint the fresh Commissioner to take out measurement with reference to the documents of both parties. The Commissioner fee also be fixed by the trial Court at discretion. Since the trial is not commenced so far, the above said process be completed within a period of three months from the date of receipt of a copy of this order.

4. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

28.02.2024

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
trp

To

The Principal District Munsif Court, Musiri.



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G.ILANGOVA, J.

Trp

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