



C.R.P(MD)No.6 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED:04.01.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P(MD)No.6 of 2024

and

C.M.P.(MD)No.60 of 2024

R.Sivarasu

.. Petitioner/Petitioner/Plaintiff

Vs.

1.Senthilkumar

2.Jothikannan

3.Ganeshkumar

4.Mahalakshmi

.. Respondents / Respondents /
Defendants

Prayer: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the order made in unnumbered I.A... of 2022 in O.S.No.63 of 2019, by the District Munsif Court, Palani dated 07.11.2022.

For Petitioner : Mr.D.Venkatesh



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ORDER

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This Civil Revision Petition has been filed challenging the order dated 07.11.2022 in unnumbered I.A... of 2022 in O.S.No.63 of 2019, passed by the learned District Munsif, Palani.

2.The plaintiff filed a suit in O.S.No.63 of 2019 before the District Munsif Court against the respondent herein seeking the relief of declaration declaring that the settlement deed dated 03.08.2018 in Document No.1177 of 2018 is null and void. Consequential injunction restraining the defendants from interfering or entering into the suit property on the strength of this settlement deed. During the pendency of the trial process, a petition under Order 26 Rule 9 was taken out in I.A.No.7 of 2019. It was allowed and an Advocate Commissioner was appointed and a direction was issued to the Advocate Commissioner to measure the property in Survey No.436/2. Aggrieved over the said order, the petitioner approached this Court by way of filing CRP(MD)No.822 of 2020. This Court by order dated 10.12.2021 modified the order directing the Advocate Commissioner not only to measure the entire extent of the property in Survey No.436/2 but also the entire extent in Survey No.448. With the above said direction it was



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disposed of. The Advocate Commissioner undertook survey and filed the report before the District Munsif Court, Palani. In the said report, the commissioner stated that this petitioner encroached a portion of the property in Survey No.436/2. According to the learned counsel for the petitioner without mentioning the correct measurement with regard to the alleged encroachment, the Advocate Commissioner filed the report. The second grievance of the petitioner is that the entire extent of both the survey numbers were not measured by the commissioner. With those allegations he filed the petition seeking a direction to the reissue an Advocate Commissioner warrant to a Senior Advocate to measure the property belongs to the third party also. The said IA came to be rejected by the Court even without numbering the same on the ground that there is third party land or property is involved in the case.

3. Reading of the rejection order shows that the Advocate Commissioner did not measure the properties of the third party. The learned counsel for the petitioner would submit that a portion of the property in Survey No.436/2 was sold by the father of the defendants 1 to 3 to a third party even before the filing of the suit. Unless the necessary third party is impleaded in this case, their portion cannot be ordered to



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be measured by the Advocate Commissioner. For which the learned counsel for the petitioner submitted that he would take steps to implead the third party in the said case.

4. The grounds stated in the rejection order is that without setting aside the earlier report, no new commissioner can be appointed. That issue can be decided on the judicial side by numbering the petition. With regard to the observation of third party's right, the trial Court's finding is correct and the observation is also correct and of course this observation ought not to be made without numbering and giving opportunity to the petitioner. So on the sole ground, the impugned order is set aside and a direction is issued to the trial Court to number the petition and shall take the petition on file and the same may be decided on merits as expeditiously as possible.

5. With the above, this Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed.

04.01.2024

Index : Yes/No

Internet : Yes/No

NCC : Yes/No

PJL

Note: Issue order copy on 08.01.2024.



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To
The District Munsif,
Palani.



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G.ILANGO VAN, J.

PJL

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