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C.R.P.No.4629 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2025

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.4629 of 2024 &
CMP.No.25899 of 2024

Kanagaraj

.. Petitioner

Versus

Gurumurthy Nayak (Deceased)

- 1.Gurusamy
- 2.Varadarajan
- 3.Krishnasamy
- 4.Chandrasekaran
- 5.Gunasekaran
- 6.Rajendran
- 7.Vanaja
- 8.Saranya
- 9.Sathish

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order passed in I.A.No.4 of 2024 in I.A.No.1 of 2020 in O.S.No.125 of 2019 by the learned District Munsif cum Judicial Magistrate at Veppanthattai dated 20.09.2024.

For Petitioner : Mr.G.Ilamurugu

For Respondent 1 : Ms.B.Sivagama Sundari



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ORDER

This civil revision petition arises against the order passed by the learned District Munsif cum Judicial Magistrate, Veppanthattai in I.A.No.4 of 2024 in I.A.No.1 of 2020 in O.S.No.125 of 2019.

2. O.S.No.125 of 2019 is a suit for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of a pathway, which is the subject matter of the suit.

3. The suit was originally presented before the learned District Munsif at Perambalur and was taken on file as O.S.No.435 of 2009. Soon after the presentation of the plaint, an application was filed in I.A.No.119 of 2009 under Order XXVI Rule 9 of the Code of Civil Procedure. The said application was allowed by the learned District Munsif at Perambalur on 19.10.2009. The Commissioner's fees was also paid and the Advocate Commissioner is said to have visited the suit property. However, for the reasons undisclosed, the Advocate Commissioner did not file his report till 06.07.2022.



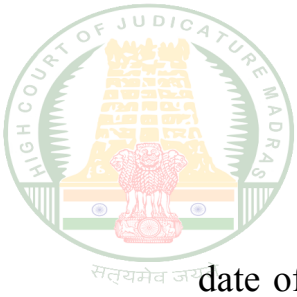
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4. In the meantime, the suit was transferred to the file of the learned District Munsif cum Judicial Magistrate, Veppanthattai and renumbered as O.S.No.125 of 2019. The application for appointment of Advocate Commissioner was renumbered as I.A.No.1 of 2020. The learned District Munsif cum Judicial Magistrate at Veppanthattai, waited for a couple of years for the report. As the report was not filed, he closed the application on 06.07.2022.

5. Thereafter, the matter went for trial, Evidence has been completed and the suit was adjourned for pronouncement of judgment on 22.12.2023. It was at that stage, the plaintiff woke up from his slumber and discovered that the Advocate Commissioner had not submitted his report. Hence, he filed I.A.No.4 of 2024 to reopen I.A.No.1 of 2020 and requested the Court to receive the Advocate Commissioner's report.

6. This application was stoutly opposed by the respondents/defendants on the grounds of delay. It was urged that nearly 13 years have been lapsed from the date of the order and two years from the



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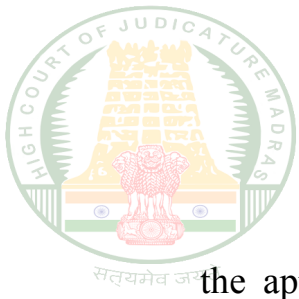
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date of closing of the application. Hence, they pleaded that the application deserves to be dismissed. Accepting the submission of the defendants, the learned District Munsif cum Judicial Magistrate at Veppanthattai dismissed the application in I.A.No.4 of 2024. Hence, this revision.

7. I heard Mr.G.Ilamurugu for the civil revision petitioner and Ms.B.Sivagama Sundarai for the first respondent. I have gone through the records.

8. It is not in dispute that I.A.No.1 of 2020 stood allowed on 19.10.2009. The commissioner also visited the property. But he did not submit his report. For the mistake committed by the Advocate Commissioner in not submitting his report, the court has closed the application.

9. In the normal course of events, the learned District Munsif should have re-called the warrant issued to the Commissioner and directed the Commissioner to refund the fee that has been received by him and should have appointed a commissioner afresh. Instead, the easy option of closing



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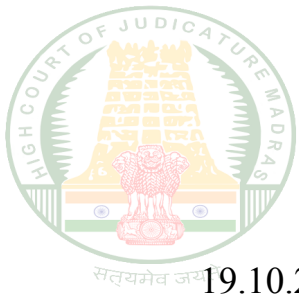
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the application was chosen by the learned District Munsif. The plaintiff should have been vigilant enough to bring into the notice of the learned Judge that he had done all that he could and still the Advocate Commissioner did not submit a report and should have asked the court to follow the aforesaid procedure.

10. The plaintiff too went into a slumber from 19.10.2009 till the date of filing of the application. He realised that the Commissioner had pocketed the fee but had not submitted the report, only when he started preparation for arguments in the suit.

11. A perusal of the impugned order shows that the learned Judge has come to a conclusion that in a suit for injunction, appointment of Advocate Commissioner does not arise. He has also laid the blame, for the default committed by the Advocate Commissioner, at the plaintiffs' doorstep. Both the reasons are unacceptable.

12. If the learned Trial Judge had felt that the Advocate Commissioner is unnecessary, he would not have granted the relief on



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19.10.2009. The order was passed and warrant was also issued to the Commissioner. Thereafter, it is not open to the learned District Munsif to suo motu review the said order and that too, after a period of nearly 14 years. It is for the defendants to challenge the said order appointing the Advocate Commissioner, before this Court. They did not do so. At the stage of considering an application to reopen an application for appointment of Advocate Commissioner, I am afraid the trial court does not possess the power to hold that the original order passed in itself is a mistake.

13. Insofar as the second reason given by the learned District Munsif that the plaintiff should have ensured that the Advocate Commissioner should submit the report is concerned, it is equally flummoxing. A party can call upon an Advocate Commissioner to inspect the suit property after paying his fee. Thereafter, it is the duty of the Advocate Commissioner, who acts as the eye of the court to inspect the property and submit a report. If he had failed, then the court, as pointed out above, should have recalled the warrant and should have collected the fee paid to the Advocate Commissioner and issued the warrant to the new commissioner.



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14. When the plaintiff has done all that he can do, for the mistake committed by an officer of the court, he cannot be faced with consequences.

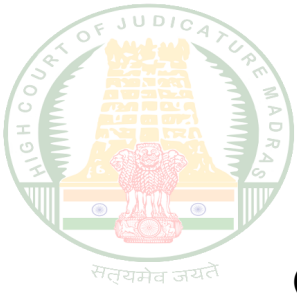
15. In the light of the above discussion, I am unable to sustain the order impugned before me. The revision stands allowed with the following directions:

(i) The order passed by the learned District Munsif cum Judicial Magistrate at Veppanthattai in I.A.No.4 of 2024 in I.A.No.1 of 2020 in O.S.No.125 of 2019 dated 20.09.2024 is set aside. I.A.No.4 of 2024 is allowed. I.A.No.1 of 2020 stands reopened.

(ii) The learned Trial Judge shall appoint an Advocate Commissioner afresh and issue a warrant on the same terms as the warrant issued by the court on 19.10.2009.

(iii) The court shall ensure that the report of the Advocate Commissioner is received within a period of 15 days from the date of appointment.

(iv) The learned Trial Judge, after giving a weeks' time for the parties to file their objections, shall consider the Advocate Commissioner's report as well as the objections and pass an order in the suit itself by 31.03.2025.



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(v) As the plaintiff has not been vigilant enough to file an application immediately on its closure, I feel that cost has to be imposed on the plaintiff. Accordingly, a cost of Rs.10,000/- shall be paid by the plaintiff to the contesting second respondent within a period of four weeks from today.

No costs in this revision. Consequently, the connected miscellaneous petition is closed.

06.01.2025

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Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no



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To

The District Munsif cum Judicial Magistrate at Veppanthattai



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V.LAKSHMINARAYANAN, J.

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