



C.R..P.(PD)(MD).No.289 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(PD)(MD)No.289 of 2023

and

C.M.P(MD) No.1393 of 2023

M.Raja

... Petitioner/Respondent
Respondent /Defendant

Vs.

T.Meenakumari,
W/o.M.Tamizhiah
Represented by her husband and
Power Agent,
Mr.M.Tamizhiah

... Respondent/Petitioner
Petitioner/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order passed in I.A.No.422 of 2022 in I.A.No.109 of 2013 in O.S.No.45 of 2013, on the file of the Principal District Munsif Court, Thanjavur, dated 22.12.2022.

For Petitioner : Mr.A.Senthil Kumar

For Respondent : Mr.M.P.Senthil



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ORDER

The defendant in O.S.No.45 of 2013, on the file of the Principal District Munsif Court, Thanjavur, has filed the present Civil Revision Petition challenging the allowing of an application to reissue warrant to the Advocate Commissioner.

2. The respondent herein had filed the above said suit for the relief of declaration that “ABCD” suit lane is a common lane and for a consequential relief of permanent injunction restraining the defendant from putting up any further construction in the suit common lane. The plaintiff has further prayed for a mandatory injunction as against the defendant to remove the illegal construction.

3. Pending suit, the plaintiff has filed I.A.No.109 of 2013 for appointment of an Advocate Commissioner to note down the width of the suit common lane and to note down the illegal construction made therein with the assistance of a qualified surveyor and also to note down other physical features. The Commissioner has filed his report on 22.11.2013. A perusal of



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the report reveals that the Commissioner has arrived at a specific finding that the suit lane does not fall either within T.S.No.1006 (belonging to the plaintiff) or within T.S.No.1032 (belonging to the defendant). According to the Commissioner, the suit lane is lying between the property of the plaintiff and the defendant. The plaintiff has not chosen to file any objection to the said report. However, the defendant has filed his objection to the report contending that the suit lane falls within T.S.No.1032.

4. When the suit was posted for cross-examination of P.W.1, the plaintiff has filed I.A.No.422 of 2022 to reissue the warrant to the same Commissioner to note down the illegal construction made in the common lane. The trial Court, after considering the application has proceeded to scrap the Commissioner's Report and has appointed a fresh Commissioner to note down the physical features and illegal construction, if any, in the suit common lane with the help of a qualified surveyor. Challenging the said order, the present Civil Revision Petition has been filed by the defendant.

5. According to the learned counsel appearing for the revision petitioner/ defendant, the prayer has been amended in I.A.No.422 of 2022 is



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only for reissue of the warrant to the same Advocate Commissioner. There was no prayer at all for scraping the report filed by the Commissioner on 22.11.2013. He further contended that the plaintiff, having not filed his objection to the Commissioner's report for nearly 10 years cannot file the present application for reissue of warrant.

6. Per contra, the learned counsel appearing for the respondent/plaintiff relying upon the warrant issued to the Commissioner in I.A.No.109 of 2013 had contended that the Commissioner was specifically directed to find out the width of the suit common lane and note down the illegal construction made therein with the help of the qualified surveyor. In the report, the Commissioner has not noted down the width of the suit lane and he has also not noted down the illegal construction in his report. Therefore, the plaintiff is constrained to file an application for reissue of warrant since the Commissioner has not complied with the warrant, that was already issued by the Court.

7. Heard both sides and perused the materials available on record.



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8. The suit is for declaration that “ABCD” suit lane is a common lane and for a mandatory injunction for removal of alleged construction put up by the defendant. The suit schedule property does not reflect any specific survey number for the suit lane. However, it is mentioned that the suit lane is between the property of the plaintiff and the defendant. There is no dispute that the plaintiff is the owner of T.S.No.1006 and the defendant is the owner of T.S.No.1032. The defendant has contended that the suit lane lies within T.S.No.1032. However, the Commissioner has found that the suit lane does not fall within T.S.No.1032, for which, objections have been filed by the defendant.

9. The Commissioner has not mentioned about the width of the lane or any alleged construction made by the defendant in the suit lane, as per the warrant issued by the Court in I.A.No.109 of 2013. In such circumstances, the request of the plaintiff in I.A.No.422 of 2022 for re-issuance of the warrant is sustainable. However, the trial Court was not right in scrapping the report of the Commissioner, especially, when no such prayer was made by the plaintiff.



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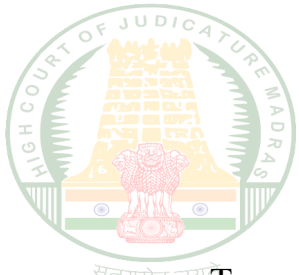
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10. In view of the above said facts, the order impugned in the revision petition is set aside and the trial Court is directed to reissue the warrant to the same Commissioner to comply with the directions found in the warrant in I.A.No.109 of 2013 (as amended in I.A.No. 262 of 2003) and to file a report indicating the width of the lane and also the construction, if any, put up by the defendant in the said lane. The report shall be filed within a period of four weeks from the date of issuance of warrant. The trial Court is directed to dispose of the suit in O.S.No.45 of 2013 on or before **30.11.2025**.

11. With the above said observations, this Civil Revision Petition is disposed of. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

04.04.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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1. The Principal District Munsif Court,
Thanjavur.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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