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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.04.2025

CORAM

THE HON'BLE MR. JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD)No.216 of 2025

and

C.M.P(MD)No.1336 of 2025

Russel @ Russel Raj

...Petitioner/Petitioner/Defendant

Vs.

Ponmani

...Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to allow this Civil Revision Petition and set aside the impugned fair and decreetal order passed by the learned Principal District Munsif, Nagercoil, dated 26.11.2024 in I.A.No.2 of 2024 in O.S.No.195 of 2000 and allow the application as prayed for.

For Petitioner : Mr.N.Dilip Kumar

For Respondent : Mr.V.George Raja

* * * * *

ORDER

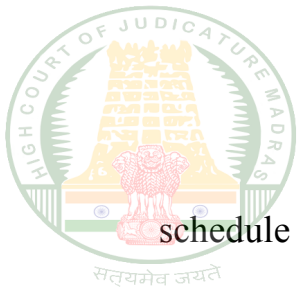
The defendant in O.S.No.195 of 2000, on the file of the Principal District Munsif Court, Nagercoil, has filed the present revision petition challenging the dismissal of his application for scrapping a report of the Advocate Commissioner.



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2.A perusal of the records reveal that the suit has been filed for the relief of permanent injunction. The suit was dismissed by the trial Court. Challenging the same, the plaintiff has filed A.S.No.128 of 2007, before the Principal Sub Court, Nagercoil. The first appellate Court has confirmed the judgment and decree of the trial Court. Challenging the same, the plaintiff has filed S.A.(MD)No.915 of 2010. This Court by an order dated 28.04.2022, has set aside the judgment and decree of the Courts below and remitted the matter back to the trial Court. The trial Court was directed to appoint an Advocate Commissioner to determine the lie and location of the property covered under Ex.B2, Ex.B4, Ex.B5 and Ex.A13. The Advocate Commissioner was directed to carry out the exercise of identification, lie and location and measurement with reference to the survey and the revenue records.

3.Pursuant to the order of this Court, the trial Court has appointed an Advocate Commissioner. Both the parties have submitted their documents and memo of instructions to the Advocate Commissioner. The Advocate Commissioner has submitted his report on 05.01.2024. The defendant has filed I.A.No.2 of 2024, to scrap the Commissioner's report on the ground that the said report reflects that the Commissioner is not in a position to identify the suit



schedule property. The said application was dismissed by the trial Court.

Challenging the same, the present revision petition has been filed.

4.The learned Counsel appearing for the revision petitioner, relying upon certain paragraphs in the Commissioner's report, has pointed out that the Commissioner has expressed his inability to identify the lie and location of the suit schedule property. In such circumstances, the report should have been scrapped by the trial Court and a fresh Commissioner should have been appointed. He has further contended that the Commissioner has unnecessarily recorded certain findings that the plaintiff is in possession of the suit schedule property.

5.Per contra, the learned Counsel appearing for the respondent herein had contended that the Advocate Commissioner has identified the suit schedule property based upon the survey and the revenue records and filed his report. Further, there is no allegation of the bias as against the Commissioner. In such circumstances, the report of the Advocate Commissioner need not be scrapped.

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



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7. This Court by an order dated 28.04.2022, made in S.A.(MD)No.915 of 2010, has directed the trial Court to appoint an Advocate Commissioner to find out the lie and location of the suit schedule property. The Advocate Commissioner has filed his report on 05.01.2024. He has expressed his inability to locate the lie and location of the property based upon the documents. However, he has proceeded to identify the lie and location of the property and has filed his report and plan based upon the survey and the revenue records. In such circumstances, there is no scope for scrapping the report of the Advocate Commissioner. However, any observations made by the Commissioner with regard to the possession of the property shall stand expunged. The parties are at liberty to examine the Advocate Commissioner, if they are so advised.

8. With the above said observations, this Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

15.04.2025

Internet: Yes/No
Index: Yes/No
RJR



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R.VIJAYAKUMAR, J.

RJR

To

The learned Principal District Munsif,
Nagercoil.

Copy to:-

The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

C.R.P.(PD)(MD)No.216 of 2025

15.04.2025