

CRP(MD)No.207 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED: 02.09.2025

CORAM:

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

C.R.P.(MD)No.207 of 2023

and

C.M.P(MD)No.1013 of 2023

1. R.Sannasi

2. V.Kandar

... Petitioners/Petitioners/Plaintiffs

Vs

A.Sannasi (Died)

... Nil/1st respondent/1st defendant

1.T.Sannasi

... 1st respondent/2nd respondent/2nd defendant

2. Pandiammal

3. S.Murugeswari

4. S.Muthulakshmi

... 2nd to 4th respondents/Legal heirs of 1st respondent/3rd to 5th defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order made in I.A.No.5 of 2021 in O.S.No.206 of 2016 dated 23-11-2021 on the file of the Additional District Munsif Court, Thirumangalam.



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For Petitioner : Mr.S.Prabhu

For Respondents : Mr.A.Sivasubramanian (R1)

Tapal returned (R2-R4)

ORDER

This Civil Revision Petition has been filed to set aside the order passed in I.A.No.5 of 2021 in O.S.No.206 of 2016, dated 23-11-2021 on the file of the Additional District Munsif Court, Thirumangalam.

2.The learned counsel for the petitioner would submit that the petitioner had instituted a suit seeking declaration that the suit property is a common pathway and consequently, for permanent injunction, apart from declaring the registered sale deed executed by the first defendant in favour of the second defendant as null and void.

3.In the said suit, the petitioner had originally filed an application in I.A.No.229 of 2017 for appointment of an Advocate Commissioner, which was allowed. However, since the Advocate



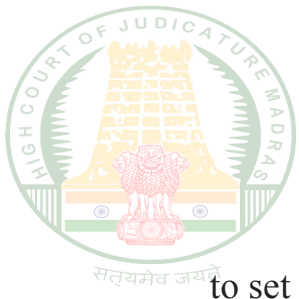
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Commissioner failed to file his report despite repeated extensions of time, the matter was listed on 18.03.2020, on which date the counsel for the petitioner made an endorsement to close the application without prejudice, on the ground that the parties had settled their dispute.

4.Subsequently, as the respondents resiled from the settlement, the petitioner once again filed an Interlocutory Application in I.A.No.5 of 2021 seeking appointment of an Advocate Commissioner. However, the Court below dismissed the said application holding that the matter was already listed for arguments and such an application could not be entertained at the stage of argument.

5.The learned counsel for the petitioner would contend that the suit property is a pathway and if the Advocate Commissioner is not appointed for noting down the physical feature of the property, it would severely affect the right of the petitioner to reach his land. He would further submit that though an Advocate Commissioner had appointed been earlier, he had failed to execute the warrant as directed, for which, the petitioner cannot be held responsible. Therefore, he prays this Court



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to set aside the impugned order.

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6. He would further submit that the petitioner himself withdrawn the earlier application and having participated in the trial proceedings, examined witnesses and permitted the Court to hear the arguments and reserved the matter for Judgment on 24.09.2021. The present application has been filed only to protract the proceedings, and hence, he prayed this Court to dismiss the petition.

7.This Court considered the submissions made on either side and perused the materials available on record.

8.Admittedly, the petitioner had already filed an application for appointment of Advocate Commissioner, which was allowed by the Court below and then the matter has been adjourned for filing report by the Advocate Commissioner. When the matter was posted on 18.03.2020 to enable the Advocate Commissioner to file his report, the petitioner had made an endorsement to close the said application without prejudice.



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9. Thereafter, the petitioner examined himself as PW1 on 04.02.2021 and both parties also let in evidence. Arguments were heard and closed on 14.09.2021 and the matter was listed on 17.09.2021. Based on the submission of learned counsel on either side, the Court below listed the matter on 24.09.2021 for Judgment. Only thereafter, the present application had been filed by the petitioner.

10. On perusal of the affidavit filed in support of the Interlocutory Application for reissue of Commissioner Warrant, the petitioner has not spelled out any reason, except the settlement talks made between the parties. It is to be noted that since the settlement had not arrived between the parties, they have let in evidence. No reason has been explained as to why the present application was not filed during the course of trial, but only after the arguments were concluded.

11. It is also to be further noted that the reason assigned by the petitioner in the application is to establish his case by appointment of an Advocate Commissioner. Time and again it has been held that Advocate Commissioner cannot be appointed merely for collecting



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evidence. When that be so, I do not find any reason to interfere with the order of the Court below.

12.For the aforesaid reasons, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

02.09.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

PNM

To

- 1.The Additional District Munsif, Thirumangalam.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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K.KUMARESH BABU, J.

PNM

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