

**In the Court of the II Additional District Munsif, Nagercoil**

**Present: Thiru.R.Sundara Kamesh Marthandan, M.L.,**

II Additional District Munsif, Nagercoil.

Tuesday, on this the 13<sup>th</sup> day of August 2024.

I.A. No.4 of 2024

in

Original Suit No.179 of 2016

CNR No.TNKK04-000347-2016

D. Edwin

through his power agent E. Jasmin

.... Petitioner/Plaintiff

-vs-

R. Balakrishnan

.... Respondent/Defendant

This Petition came up before this Court on 26.07.2024. Thiru. D. Vijay Antony Advocate for the Petitioner/Plaintiff and Thiru. Sahayadhas Advocate for the Respondent. The Respondent set exparte. Upon perusing the case records and having stood over for consideration till this day, this Court delivers the following:

**ORDER**

1. The Petitioner had filed the above Petition under Order XXVI Rule 9 and Section 151 of Code of Civil Procedure, seeking an Order to appoint an Advocate Commissioner to measure the Petition Schedule Property with the help of Taluk Surveyor and note the physical features of the same.

2. The Petition had stated that the Petitioner is the Plaintiff and had filed the above suit for Permanent Injunction. The suit is pending Trial. Earlier in I.A.No.457 of 2016 an Advocate Commissioner was appointed namely Mr. I. Lenin. On 08.02.2023, the Petitioner deposited of Rs.4,000/- (Rupees Four Thousand Only) towards his remuneration. The Advocate Commissioner filed memo, stating that the Petitioner had not co-operated for the execution of the Commission. Hence the said I.A.457 of 2016 was dismissed. The said fact was not informed, by the Petitioner's earlier counsel. The Petitioner's erstwhile counsel had not acted as bridge between the Advocate Commissioner and the Petitioner, as such the Court order in I.A.No 457 of 2016, could not be executed.

3. The same mistake is not wanton. It happened because of the mistake of the erstwhile counsel. The dispute between the parties is with regard to the measurement of the properties, in view of the confusion that occurred during subdivision. Hence the suit property has to be measured with the help of Taluk Surveyor and report has to be filed, before this Court failing, which the Petitioner will be put to irreparable loss and hardship. Allowing the petition will be in the interest of justice and will ensure fair Trial. Hence the above petition.

4. The Respondent was set exparte for not filing counter.

5. The point for consideration is whether the above Petition has to be allowed or not?

6. The Petitioner had filed the above suit for permanent injunction against the defendant. As pleaded by the Petitioner in I.A.No.457 of 2016, one Mr. I. Lenin was not initially appointed as Advocate commissioner. On 12.09.2016, One Mrs. Sankari was appointed as Advocate Commissioner. Her remuneration was fixed Rs 4,000/- (Rupees Four Thousand Only). Thereafter they said I.A was pending for filing Commissioners Report and Plan. Mrs. K. Sankari, who was appointed as Advocate Commissioner had returned the warrant on 10.11.2017. Thereafter Mr. I. Lenin was appointed as Advocate Commissioner on 10.11.2017. Even thereafter the Commission was not executed and Report and Plan was not filed.

7. On 13.07.2021, the said Advocate Commissioner had returned the warrant citing, non co-operation from the Plaintiff side. Thereafter the above I.A.No.457 of 2016 was posted for hearing the Plaintiff's side on 08.06.2021 13.07.2021 20.07.2021, 17.08.2021, 14.09.2021 and at last on 21.10.2021. As the Petitioner has not appeared and was not represented before this Court on 21.10.2021, the said I.A.No.457 of 2016 was dismissed. It is also not out of place to mention that I.A.No. 1 of 2021 was filed on 30.11.2021, without disclosing the fact about the earlier I.A.No.457 of 2016, with the very same prayer i.e. seeking issuance of commission, I.A.No.1 of 2021 was filed. The said

I.A. No. 1 of 2021 was also closed on 08.02.2023 stating that earlier I.A.No. 457 of 2016 was dismissed. As discussed above in I.A. No. 457 of 2016, two Advocate Commissioners returned the warrant stating non-co-operation of the Plaintiff. Such being the case, it is evident that the Petitioner had not co-operated with the Advocate Commissioner on two occasions and had also filed applications after applications, seeking the same relief. In the second application I.A.No.1 of 2021, the Petitioner has mentioned the fact that I.A.No.457 of 2016 was dismissed on 21.10.2021.

8. Further in the above Petition, the Petitioner had not mentioned about the very filing of I.A.No. 1 of 2021, such conduct of the Petitioner, suppressing material fact and filing successive Petitions have to be depreciated. The same disentitles the Petitioner to get the petition relief. The Petitioner had not stated anything about, the initial appointment of the Advocate Commissioner Mrs. K.Sankari in the affidavit filed in support of the above I.A. Under the pretext of the Commission application, the Petitioner had successfully protracted the suit for years together. The Court helps the litigant who are vigilant and prosecutes their case diligently. In the case on hand, the Petitioner had not acted diligently and had suppressed material facts. Hence this Court is of the considered view that the Petitioner is not entitled for the Petition relief.

In the result, the above petition is dismissed. Since the Petitioner had suppressed material facts and filed successive petitions it is ordered that the Petitioner pay a sum of Rs.2,000/- (Rupees Two Thousand Only) as cost to the Respondent.

Dictated to the Steno-Typist, transcribed and typed by her in computer and corrected and pronounced by me in Open Court, this the 13<sup>th</sup> day of August 2024.

Sd/-  
II Additional District Munsif  
Nagercoil.

Petitioner side witness & Documents : Nil

Respondent side witness & Documents : Nil

Sd/-  
II Additional District Munsif  
Nagercoil.

I.A.No.4 of 2024

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O.S.No.179 of 2016

Fair Order

Date : 13.08.2024

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Date : 13.08.2024

**Order pronounced in Open Court**

In the result, the above petition is dismissed. Since the Petitioner had suppressed material facts and filed successive petitions it is ordered that the Petitioner pay a sum of Rs.2,000/- (Rupees Two Thousand Only) as cost to the Respondent.

II ADM





