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CRP No. 637 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-08-2026

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

**CRP No. 637 of 2024
and CMP No. 3161 of 2024**

Ramasamy

Petitioner(s)

Vs

Muthusamy

Respondent(s)

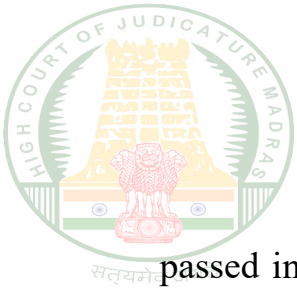
PRAYER Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 18.08.2023 passed in I.A.No.4 of 2022 in I.A.No.1224 of 2013 in O.S.No.445 of 2013 on the file of the Principal District Munsif Court, Namakkal.

For Petitioner(s): Ms.Shruthi Varshini for
Mr.I Abrar Mohamed Abdullah

For Respondent(s): Mr.Sam Jayaraj Houston for
M/s.Sarvabhauman Associates

ORDER

This Civil Revision Petition has been filed under Article 227 of the Constitution of India challenging the fair and decreetal order dated 18.08.2023



passed in I.A.No.4 of 2022 in I.A.No.1224 of 2013 in O.S.No.445 of 2013 on the file of the Principal District Munsif Court, Namakkal, wherein the application filed by the respondent/plaintiff to restore the application filed for appointment of an Advocate Commissioner under Order XXVI Rule 9 of C.P.C., came to be allowed by the Court below.

2.Heard the learned counsel for the petitioner and learned counsel appearing on behalf of the respondent and carefully perused the materials available on record and this Court also carefully went through the order passed by the Court below.

3.The respondent is the plaintiff in the suit filed in O.S.No.445 of 2013, seeking the relief of declaration, mandatory injunction and for permanent injunction.

4.The petitioner filed IA No.1224 of 2013 under Order XXVI Rule 9 of C.P.C., for the appointment of an Advocate Commissioner to inspect the property, measure the same with the help of the Surveyor, note down the physical features and to file a report before the Court. This application was closed on 24.03.2022. Hence, the petitioner filed IA No.4 of 2022 to restore the said application and the said application came to be allowed by the Court below



by order dated 18.08.2023. Aggrieved by the same, the petitioner/defendant has filed the present Civil Revision Petition before this Court.

5. On carefully considering the submissions made on either side and the materials available on record, it is seen that the suit was filed in the year 2013 and along with the suit, IA No.1224 of 2013 was filed under Order XXVI Rule 9 of C.P.C., for the appointment of an Advocate Commissioner. This application came to be closed on 11.02.2015 and hence, IA No.767 of 2015 was filed to reopen IA No.1224 of 2013. IA No.767 of 2015 was dismissed for default on 01.10.2025. Hence, IA No.26 of 2016 was filed to restore IA No.767 of 2015 and the same was allowed on 08.02.2016. However, the suit was dismissed for default on 20.10.2016.

6. After nearly three years, the suit was restored on 07.03.2019 and IA No.1224 of 2013 also was restored. But however, it was dismissed for default on 23.10.2019. Therefore, IA No.1 of 2019 was filed to restore IA No.1224 of 2013 and this Interlocutory Application was allowed.

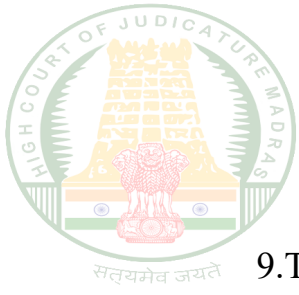
7. On 01.11.2019, the suit was once again dismissed for default. It was again restored on 30.03.2021. IA No.1224 of 2013 also stood restored. However, it was closed on 24.03.2022. Hence, the plaintiff filed IA No.4 of



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2022 to restore IA No.1224 of 2013 and the Court below has allowed the said application.

8. In the considered view of this Court, the Court below has completely disregarded the conduct of the respondent/plaintiff in this case. This suit is going on from the year 2013 and it was dismissed for default at least on two occasions and the application for appointment of an Advocate Commissioner is opened and closed at various points of time. If the plaintiff is not conducting the suit with due diligence, it is not necessary for a Court to allow applications on misplaced sympathy. A time has come when the Courts must be stringent when delay is caused by any party and the same is not sufficiently explained. In the case in hand, the application for appointment of an Advocate Commissioner came to be filed in the year 2013 and ultimately, after a long process of opening and closing the application, it came to be allowed by the Court below as a matter of course in the year 2023. There is absolutely no merits in the application and the conduct of the plaintiff in this case disentitles the plaintiff to any sympathy. The parties must not think that they can get in and go out of the Courts as and when they want and ultimately, stand up for their rights whenever they deem it fit. It is only because of litigants like the plaintiff, the suits are not able to be disposed of by Courts and it clogs the entire system.



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9.This Court finds that the order passed by the Court below suffers from perversity and accordingly, the order passed in I.A.No.4 of 2022 in I.A.No.1224 of 2013 in O.S.No.445 of 2013 on the file of the Principal District Munsif Court, Namakkal, is hereby set aside.

10.In the result, this Civil Revision Petition stands allowed and there shall be a direction to the Principal District Munsif Court, Namakkal, to dispose of O.S.No.445 of 2013, within a period of three months from the date of receipt of copy of this order. No Costs. Consequently, the connected miscellaneous petition is closed.

27-08-2026

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
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N.ANAND VENKATESH J.

SSI

To

The Principal District Munsif Court, Namakkal.

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