



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2016

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD)No.1235 of 2016

and

C.M.P.(MD) No.5994 of 2016

1. S.Regina Devi

2.B.Sathya Sridharan ... Petitioners/Respondents/ Defendants

Vs.

Chellakannu alias Chockkalingam

(Insane person) represented through his

Son and next Friend Sri.C.Muthukumar

... Respondent/Petitioner/Plaintiff

PRAYER: Civil Revision Petition filed under Section 227 of Constitution of India against the petition and docket order dated 20.04.2016 passed in I.A.No.276 of 2016 in O.S.No.116 of 2016 on the file of District Munsif Court, Tirumangalam.

For Petitioners : Mr.V.Balaji

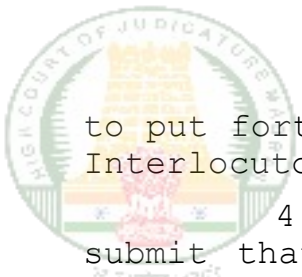
For Respondent : Mr.R.Subramanian

O R D E R

This Civil Revision Petition arises out of the docket order dated 20.04.2016 passed by the learned District Munsif , Tirumangalam.in I.A.No.276 of 2016 in O.S.No.116 of 2016.

2. The learned counsel for the petitioners submitted that the respondent herein filed a suit in O.S.No.116 of 2016 before the learned District Munsif, Thirumangalam, praying for declaration, recovery of possession and mandatory injunction. The respondent herein has also filed Interlocutory Application in I.A.No.276 of 2016 on 13.06.2016 to appoint an Advocate Commissioner to measure the Item Nos. 1 and 2 in the suit properties with the help of a qualified Surveyor and to note down the existing physical features of the suit properties and file a report. In the aforesaid application, an ex-parte order was passed by the trial court. Aggrieved by the said order, the revision petitioners/defendants have filed the present Civil Revision petition before this Hon'ble Court.

<https://hcservices.ecourts.gov.in/hcservices/> The learned counsel for the revision petitioners/defendants raised the ground that the trial court ought to have granted reasonable opportunity for the revision petitioners



to put forth their defence before passing the order in the aforesaid Interlocutory Application.

4. The learned counsel for the respondent/plaintiff would submit that the suit in O.S.No.116 of 2016 was filed praying for recovery of possession and mandatory injunction. The respondent/plaintiff had laid a statement that if the land in S.No.284/3, S.No.283/A and S.No.283/9A1A are measured and the boundary lines are fixed, the encroachment made by the respondents/defendants can easily be brought to the knowledge of the court and therefore, the trial court allowed the said application for appointment of an Advocate Commissioner to measure the property and submit a report so as to identify the encroached portions. Hence, the order passed in I.A.No.276 of 2016 in O.S.No.116 of 2016 is perfectly valid in law.

5. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondent and perused the materials available on record.

6. It is seen that the respondent herein, as plaintiff, filed the suit in O.S.No.116 of 2016 before the trial court praying for declaration, recovery of possession and mandatory injunction. In the suit, I.A.No.276 of 2016 was filed for appointment of an Advocate Commissioner to measure the suit property with the help of a qualified Surveyor and to submit a report. At the time of hearing, the learned counsel for the respondent/plaintiff herein has specifically submitted that if the property is measured and the boundary lines are fixed, the encroachments made by the defendants can be easily identified. At the same time, the said application was allowed by the trial court without providing an opportunity to the defendants. The principles of natural justice would be followed before passing the impugned order. Therefore, in the interest of justice, an opportunity shall be provided to both the parties before passing the final orders in the Interlocutory Application. Hence, I am inclined to pass the following order:

i) The order passed in I.A. No.276 of 2016 in O.S.No.116 of 2016 dated 20.04.2016 is hereby set aside and

ii) The aforesaid application is remitted back to the trial court to decide the case afresh after providing opportunities to the parties concerned, on merits and

iii) The trial court is directed to pass an order in I.A. No.276 of 2016 within a period of six weeks from the date of receipt of copy of this order on merits.

7. It is made clear that the trial court shall dispose of I.A. No. 276 of 2016 uninfluenced by any of the observations made in this order.



8. In the result, this Civil Revision Petition is allowed.
No costs. Consequently, connected C.M.P.(MD) No.5994 of 2016 is closed.

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Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

CM

To

The District Munsif Court,
Tirumangalam.

+1 cc to Mr.R.SUBRAMANIAN ,Advocate, Sr.No: 51849

+1 cc to Mr.V.BALAJI,Advocate, Sr.No: 52056

JAM/SS2/22.09.16/ 3P-4C

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