



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.08.2018

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THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

C.R.P. (PD) (MD) No.1195 of 2016

1.S.Thanikodiammal

2.S.Ramamoorthy

.. Petitioners/Petitioners/Defendants

/Vs./

D.Benazeer Fathima

.. Respondent/Respondent/Plaintiff

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition and set aside the fair and decreetal order, dated 06.01.2016 made in I.A.No.137 of 2015, in O.S.No.22 of 2015 on the file of the District Munsif Court, Madurai Taluk.

For Petitioners

: Mr.PT.S.Narendravasan

For Respondent

: Mr.R.Parthiban

ORDER

The defendants in O.S.No.22 of 2015 on the file of the District Munsif court, Madurai are the revision petitioners herein. This suit is one for bare injunction. The respondent claims that the suit property is her own absolute property. The revision petitioners claim that it is a public pathway, which was donated by the plaintiff in favour of the local body. Since this is only a suit for bare injunction, the Court below took the view that the question of appointing Advocate commissioner will not arise, as it would amount to permitting the parties to gather evidence in support of their case. In such view of the matter, the Court below had dismissed the interlocutory application by order dated 06.01.2016. The correctness of the order is questioned in this Civil Revision Petition.

2.The learned counsel appearing for the respondent submitted that the Court below had given a correct and convincing reason for dismissing the interlocutory application. Hence it does not warrant any interference.

3.I am of the view that this is not an injunction suit with respect to a private property. The property in question has been gifted in favour of the local body, namely, Uthangudi Panchayat, which now appears to be part of Madurai Corporation. The case of the revision petitioner is that the plaintiff had executed the Inam



gift deed, dated 26.03.2010, in favour of the local authority. Therefore, the relief sought for by the revision petitioners in the interlocutory application has to be allowed by this Court. Accordingly, the order impugned in this Civil Revision Petition is set aside and this Civil Revision petition is allowed with the following directions.

1.The Court below shall appoint an Advocate commissioner for locating the property that was gifted vide gift deed, dated 26.03.2010 and file a report with the help of the Municipal Surveyor.

2.Since the interest of the general public is also involved, the Commissioner, Madurai corporation shall be impleaded suo motu as third defendant in the suit. No costs.

SD

ASSISTANT REGISTRAR (CS III)

TRUE COPY

SUB ASSISTANT REGISTRAR (CS II)

TM

To

1.The District Munsif, Madurai Taluk, Madurai.

2.The Commissioner, Madurai Corporation, Madurai.

3.The Section Officer,

V.R.Section, Madurai Bench of Madras High Court, Madurai.

1CC TO MR. P.T.S. NARENDRAVASAN, ADVOCATE SR 81495

1CC TO MR. R. PARTIBAN, ADVOCATE SR 81551

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