



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2019

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WEB COPY

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

C.R.P (MD) No.757 of 2019
and
C.M.P (MD) No.4623 of 2019

1.D.Guverapandian

2.D.Malaisamy @ Saravanapandian

3.Senthamilselvi .. Petitioners/Respondents/
Defendants

Vs.

M.Ravi .. Respondent/Petitioners
Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 11.02.2019 made in I.A.No.13 of 2019 in O.S.No.7 of 2019 by the Second Additional Sub Judge, Madurai.

For petitioners : Mr.V.Nagendran

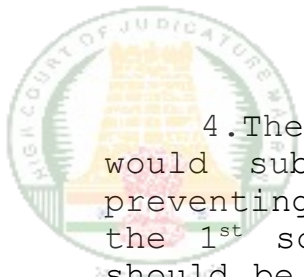
For Respondent : Mr.G.Mohankumar

ORDER

Against the order of appointment of Advocate Commissioner, this revision petition has been filed.

2.The respondent / plaintiff has filed O.S.No.7 of 2019 for the reliefs of damages, permanent injunction and also for mandatory injunction. Pending suit, the respondent / plaintiff has filed I.A.No.13 of 2019 seeking to appoint an Advocate Commissioner to note down the physical features of the 1st and 2nd items of suit properties with the help of a qualified engineer. The Court below has allowed the same, against which, the present revision has been filed.

3.The learned counsel appearing for the petitioners / defendants would submit that the Court below without giving due opportunity to the petitioner to file counter, has straight away ordered the commission petition. There is no necessity to appoint an Advocate Commissioner in the present suit. Thus, he prayed to set aside the order passed by the Court below.



4.The learned counsel appearing for the respondent / plaintiff would submit that the petitioners / defendants are illegally preventing the respondent / plaintiff to complete his building in the 1st schedule property and thereby caused loss to him, which should be compensated by the petitioners / defendants. Therefore, for the deciding the issue in the suit, appointment of Advocate Commissioner is necessary. The Court below has rightly allowed the petition. Thus, he prayed to dismiss the revision.

5.Heard the learned counsel for the parties and perused the materials available on record.

6.Perusal of records would show that the petitioners / defendants have not been given any opportunity to file counter. The learned Judge has recorded that the respondents did not object the petition by filing counter and accordingly, allowed the commission petition. Considering the submission made on the side of the petitioners / defendants that no opportunity was given to them, this Court is of the view that an opportunity must be given to the petitioners / defendants for filing counter in the commission petition. Therefore, the order dated 11.02.2019 passed in I.A.No.13 of 2019 in O.S.No.7 of 2019 by the learned Second Additional Sub Judge, Madurai is set aside and the matter is remanded back to the Court below. The petitioners / defendants are directed to file counter within a period of four weeks from the date of receipt of copy of this order. Thereafter, the learned Judge after considering the counter to be filed on the side of the petitioners / defendants and also after hearing both sides, shall pass fresh orders in I.A.No.13 of 2019 in O.S.No.7 of 2019, within a period of four weeks.

7.This civil revision petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T & P)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Second Additional Sub Judge, Madurai.

+1CC TO MR.V.NAGENDRAN, Advocate Sr. No. 71962

ORDER MADE IN
C.R.P(MD)No.757 of 2019
and C.M.P(MD)No.4623 of 2019
27.06.2019