



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.06.2019

CORAM

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

C.R.P (MD) No.813 of 2019
and
C.M.P (MD) No.4954 of 2019

1.Gayathri

2.Gurusamy

3.Ponnuthai

.. Petitioners/Defendants

Vs.

Malligadevi

.. Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 13.02.2019 made in I.A.No.484 fo 2018 in O.S.No.259 of 2014 by the District Munsif Court, Uthamapalayam.

For petitioners : Mr.T.Vadivelan

For Respondent : Mr.R.Suriyanarayanan

ORDER

Against the dismissal of commission petition, this revision has been filed.

2.The respondent / plaintiff filed O.S.No.259 of 2014 for the reliefs of permanent injunction and mandatory injunction, in respect of a pathway. Pending suit, the petitioners / defendants filed I.A.No.484 of 2018 seeking to appoint an Advocate Commissioner to measure the houses of rival parties and also the neighbours and to file his report and plan. The Court below has dismissed the same. Against which, the present Civil Revision Petition has been filed.

3.The learned counsel appearing for the petitioners / defendants would submit that in order to refute the claim made on the side of the respondent / plaintiff, the petitioners / defendants have filed the present petition seeking to appoint an Advocate Commissioner to measure the houses of rival parties and the neighbours with the help of a surveyor. The neighbours, namely Seethappan and Jeya are very well connected with the suit pathway and they have purchased the property from the parties of



the suit and therefore, measurement of their lands as per their documents, is essential for adjudication of the suit. But, the Court below has erroneously dismissed the same. Thus, he prayed to set aside the same.

4.The learned counsel appearing for the respondent / plaintiff would submit that since the petitioners / defendants encroached the common pathway, the respondent / plaintiff has filed the suit. Therefore, the petition seeking to appoint an Advocate Commissioner to inspect the houses of rival parties and others, does not arise. The neighbours are not parties to the suit. The Court below after considering the above aspects, has rightly dismissed 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 earlier at the instance of the respondent / plaintiff, an Advocate Commissioner was appointed in I.A.No.914 of 2014 and he inspected the suit property and filed his report and plan. The petitioners / defendants without filing a petition to scrap the said report and plan, have filed the present petition seeking to appoint an Advocate Commissioner to measure the houses of rival parties and also neighbours, who are also not parties to the present *lis*, which is not acceptable. The petitioners / defendants without impleading the neighbours as parties to the suit, wanted to rely upon their documents. The learned Judge after considering the above aspects, has rightly dismissed the petition, which does not require any interference at the hands of this court. Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(cs-iii)

// True Copy //

Sub Assistant Registrar(CS)

smn

To

1.The District Munsif,
Uthamapalayam.



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The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1CC TO MR.R.SURIYANARAYANAN, Advocate Sr. No.72121

**ORDER MADE IN
C.R.P(MD) No.813 of 2019**

DB(CO)
TR (05.07.2019) 3P 5C