



C.R.PD.No.782 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.(PD).No.782 of 2019

and

C.M.P.No.5139 of 2019

K.Venkatraj

... Petitioner

Versus

Jayachandran

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 22.11.2018 passed in I.A.No.80 of 2018 in O.S.No.56 of 2018 on the file of the Court of Subordinate Judge, Udhamandalam.

For Petitioner : Mr.R.Venkatajalapathy

For Respondent : Mr.Devin S.Robello

ORDER

The revision petitioner is challenging the order passed by the learned trial Judge in I.A.No.80 of 2018 in O.S.No.56 of 2018, which was



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filed by him to appoint an Advocate Commissioner, and to note down the existing physical features and encroachment in the suit property, which includes the drainage Pipe Line etc.,

2. On hearing the objection raised by the respondent / defendant, the learned trial Judge dismissed the said application, by observing that the physical features that existed in the suit property, have not been disputed by both the parties.

3. At the time of arguments, the learned counsel for the petitioner submitted that as he claimed relief of mandatory injunction to remove the house boundaries in the patta land, and to prove the same with the help of all material evidence including the Commissioner's report.

4. On a perusal of the claim, it is seen that the first relief claimed by the petitioner is mandatory injunction, directing the defendant to remove the encroachment caused by the defendant who laid an unauthorized drainage pipe line and manhole by encroaching into the plaintiff's suit property, which



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measured width ad-measuring 20 x 2 feet from the Northern side to the Southern side of the suit property.

5. So to prove his case, the plaintiff has to necessarily to file an application for appointment of Advocate Commission. The report of the Commissioner would enlighten the Court about the nature and physical feature of the suit property. Hence the objection raised by the defendant is unsustainable one, for the reason that plaintiff is entitled to exercise all remedies before the trial Court. Without considering this legal aspect, the learned trial Judge had erroneously dismissed the petition, which requires interference by this Court. Hence the order passed by the learned Subordinate Judge, Udhamandalam, in I.A.No.80 of 2018 in O.S.No.56 of 2018 is set aside. Accordingly, this Civil Revision Petition is allowed. Consequently, connected Miscellaneous petition is closed. No costs. Trial Court is directed to dispose of the case within a period of 4 months from the date of receipt of a copy of this order.

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Index : Yes / No
Speaking Order: Yes/No
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T.V.THAMILSELVI, J.

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To

- 1.The Sub-Judge,
Udhagamandalam.
- 2.The Section Officer,
V.R.Section, High Court of Madras.

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and
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