



C.R.P(PD)No.3777 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.11.2021

Coram

The Honourable Mr.Justice J.SATHYA NARAYANA PRASAD

**C.R.P(PD)No.3777 of 2016
and C.M.P.No.19253 of 2016**

Ganesan

...Petitioner

Versus

1.Chidambaram

2.Banumathi Kandasamy

3.Kandasamy

4.Koyila Chinnaiyan

5.Poosari Chinnaiyan

6.Chinnapillai

...Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 22.09.2016 passed in I.A.No.213 of 2016 in O.S.No.306 of 2013 on the file of the learned District Munsif Court, Attur.



WEB COPY



C.R.P(PD)No.3777 of 2016

For Petitioner : Mr.P.Jagadeesan

For Respondents : No Appearance

ORDER

This Civil Revision Petition has been filed by the petitioner challenging the fair and decreetal order passed by the learned District Munsif, Attur in I.A.No.213 of 2016 in O.S.No.306 of 2013 dated 22.09.2016, in and by which, the learned District Munsif has dismissed the Interlocutory Application filed by the petitioner under Order XXVI Rule 9 of C.P.C, for appointing an Advocate Commissioner to visit the suit property and measure it with aid of qualified surveyor and note down the physical existing features in the suit property and file a report with plan.

2. The case of the revision petitioner is that he has filed an Original Suit in O.S.No.306 of 2013 before the District Munsif Court, Attur, for permanent injunction. While the said suit is pending, he has filed an



C.R.P(PD)No.3777 of 2016

Interlocutory Application in I.A.No.889 of 2013, for appointing an Advocate Commissioner to note down the physical features of the suit property. The said Interlocutory Application was allowed and the Advocate Commissioner who was appointed by the Court below has visited the suit property and he has also filed a Report and Plan. As per the Report filed by the Advocate Commissioner, the suit property is situated on the northern side of the Gandhipuram Road in Koolamedu. But, at the time of inspection of the suit property by the Advocate Commissioner, the Government has not laid any road in the subject suit property. While so, on 18.12.2014, the respondents and the subordinates of the Government Officials have come to the suit property and laid a metal road there. Aggrieved over the said act of the respondents, the petitioner has filed yet another Interlocutory Application in I.A.No.213 of 2016, for appointing an Advocate Commissioner to visit the suit property and measure it with aid of qualified surveyor and note down the physical features in the suit property, however, the said Application was dismissed by the trial Court vide order dated 22.09.2016. Hence, he has come before this Court with the present Civil Revision Petition.



C.R.P(PD)No.3777 of 2016

WEB COPY

3. The learned counsel for the petitioner submitted that when the Advocate Commissioner inspected the suit property, the Government has not laid any road there, but, thereafter, a metal road was laid by the respondents and the subordinates of the Government Officials in the subject suit property. Therefore, pending the suit, the petitioner has filed the Application in I.A.No.213 of 2016 before the trial Court since he wanted to ascertain whether the said road forms a part of the suit property owned by him. But the trial Court dismissed the said I.A.No.213 of 2016 filed by him, without considering the circumstances which were prevailing at the time of inspection of the suit property by the Advocate Commissioner, in the year 2014 and at present in the year 2016. He further submitted that appointing an Advocate Commissioner as prayed by the petitioner will not cause any prejudice to the respondents.

4. Heard the learned counsel for the petitioner. None appeared on behalf of the respondents.



WEB COPY



C.R.P(PD)No.3777 of 2016

5. In view of the facts and circumstances of the case and having regard to the submissions made by the learned counsel for the petitioner, this Civil Revision Petition is allowed and the order passed by the District Munsif Court, Attur in I.A.No.213 of 2016 in O.S.No.306 of 2013 dated 22.09.2016 is hereby set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

25.11.2021

mrr

Index : Yes/No

To

District Munsif Court,
Attur.



WEB COPY



C.R.P(PD)No.3777 of 2016

J.SATHYA NARAYANA PRASAD, J.

mrr

C.R.P(PD)No.3777 of 2016

25.11.2021