

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (PD) No.1590 of 2021

1.K.S.Rayappan
2.R.Vijayakumar
3.R.Ganeshkumar
4.K.Janaki
5.K.Vasanthamani

...
Petitioners /
Plaintiffs

versus

1.G.Soundarrajan
2.R.Jayanthi Manohar
3.B.Viswanathan
4.K.Girija

5.M/s.Vinorra Tiles Company,
Rep. by its Proprietor,
R.Jayanthi Manohar
Door No.17, 5th Street,
P.M.R.Layout,
Civil Aerodram Post,
Coimbatore - 641 014.

6.K.Girija
7.K.G.Gopalan
8.S.Shanmugapandian
9.S.Krishnamoorthy
10.R.Eswaramoorthy

11.K.Saravanakumar
12.S.Parimalam
13.M.Subramanian
14.N.Anandakumar
15.K.Tamilselvi
16.B.Lokeshkumar
17.K.Devaraj
18.B.Manonmani

...

Respondent /
Defendants

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to revise the order passed by the learned Subordinate Judge, Coimbatore in I.A.No.3 of 2021 in O.S.No.191 of 2021 dated 08.02.2021 and to appoint Taluk Surveyor Suler along with Advocate Commissioner.

For Petitioners : Mr.S.Venkatesh

ORDER

This Civil Revision Petition is filed to revise the order passed by the learned Subordinate Judge, Coimbatore in I.A.No.3 of 2021 in O.S.No.191 of 2021 dated 08.02.2021 and to appoint the Advocate Commissioner along with Suler Taluk Surveyor.

2. The learned counsel for the petitioners submitted that, the petitioners filed the suit claiming the relief of declaration that, the plaintiffs are having the right of user of the North-South cart track of 30 feet

breadth to reach the suit property, permanent injunction restraining the defendants from interfering with the user of cart track and for the removal of the encroachment to an extent of 6118 feet made by the defendants in the aforesaid cart track and for costs.

3. At the time of filing the suit, petitioners filed the petition under Order 26 Rule 9 and Section 151 of C.P.C., seeking appointment of an Advocate Commissioner to note down the physical features along with Sulur Taluk Surveyor and also along with the qualified photographer, with the direction to the Commissioner to file report along with the plan. However, he further submitted that the learned trial Judge though appointed the Advocate Commissioner to inspect the suit property, he did not direct the Advocate Commissioner to inspect the property along with Sulur Taluk Surveyor. Therefore, he now seeks to modify the order of the learned Subordinate Judge, Coimbatore, and prays to direct the Advocate Commissioner to inspect the property along with Sulur Taluk Surveyor.

4. No doubt, in the facts and circumstances of the case and the relief claimed in the plaint, the appointment of Advocate Commissioner to inspect the suit property with the assistance of Suler Taluk Surveyor, is absolutely necessary for proper adjudication. However, the learned trial Judge has not chosen to direct the Advocate Commissioner to inspect the suit property with the assistance of Suler Taluk Surveyor, though it was claimed in the petition. This order has to be necessarily modified. Therefore, the learned Subordinate Judge, Coimbatore, is directed to give notice to both sides and modify the order, directing the Advocate Commissioner to inspect the suit property along with Suler Taluk Surveyor and also with the help of Photographer.

5. This Civil Revision Petition is disposed of accordingly. However, there is no order as to costs.

सत्यमेव जयते

11.08.2021

Speaking order / Non-speaking order
Index : Yes / No

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To

The Subordinate Judge, Coimbatore.



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G.CHANDRASEKHARAN, J.

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