



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.06.2021

CORAM:

WEB COPY

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

C.R.P. (PD) (MD)No.800 of 2021
and C.M.P. (MD) .No.4310 of 2021

1.Angurani
2.Saravanamoorthy
3.Veerasekar
4.Pusphalatha ..Petitioners/Respondents/Defendants

-Vs-

Saravanan .. Respondent/Petitioner/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order in I.A.No.2 of 2020 in O.S.No.48 of 2020, Dated 11.03.2021, on the file of the learned Principal District Munsif Court, Manamadurai.

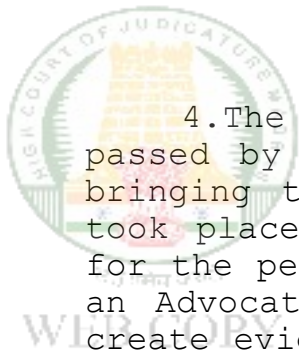
For Petitioner : Mrs.A.Banumathy

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order passed by the Court below allowing the application filed by the respondent/plaintiff for appointment of an Advocate Commissioner to note down the physical features of the suit property with the help of a qualified surveyor.

2.The petitioners are the defendants before the Court below in the suit filed by the respondent seeking for the relief of declaration, mandatory injunction and permanent injunction.

3.During the pendency of the above suit, the respondent filed an application under Order 26 Rule 9 of C.P.C, seeking for appointment of an Advocate Commissioner to note down the physical features of the suit properties and to submit a report. The Court below after considering the facts and circumstances of the case, allowed the application and directed the Advocate Commissioner to note down the physical features of the suit property with the help of a qualified surveyor based on the title documents and revenue records and to submit a report before the Court. Aggrieved by the same, the present Civil Revision Petition has been filed before this Court.



4.The learned counsel for the petitioners attacked the order passed by the Court below more on the merits of the case and by bringing to the notice of the Court the revenue proceedings that took place between the parties. According to the learned counsel for the petitioners, no useful purpose will be served in appointing an Advocate Commissioner and the respondent is only attempting to create evidence and justify the illegal patta that was obtained for the public pathway.

5.The respondent, who is the plaintiff, has filed the suit for declaration and other consequential reliefs and therefore, the burden of proof is upon the respondent to establish the title over the suit property. The respondent/plaintiff has taken a very specific stand that petitioners have encroached upon the suit property on the southern side and have constructed a compound wall. The Court below has rightly found that by noting down the physical features, there will be more clarity in understanding the physical features of the property and it would help the Court to come to a conclusion.

6.The mere appointment of an Advocate Commissioner does not in any way take away the rights of the petitioners. If ultimately, the petitioners have any objections to the report filed by the Advocate Commissioner, they can always file their objections to the report. Nothing can stop the petitioners from independently contesting the suit on its own merits and at the best, the report of the Advocate Commissioner will only be a piece of evidence which may or may not be relied upon by the Court below.

7.This Court does not find any illegality or infirmity in the order passed by the Court below and it does not warrant any interference of this Court. The issues raised by the petitioners will be considered by the Court below on its own merits and in accordance with law.

8.In the result, this civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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To

1.The Principal District Munsif, Manamadurai.

2.The Record Keeper,

V.R. Section,

Madurai Bench of Madras High Court,

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C.R.P. (PD) (MD) No. 800 of 2021

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