



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (MD)No.1182 of 2020

and

CMP (MD)No.7504 of 2020

Ponnuthai

... Petitioner

vs.

1) Sumathy

2) Muruganantham

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 30.08.2019 passed in I.A.No.2354 of 2018 in O.S.No.141 of 2015 on the file of Principal District Munsif Court, Dindigul District.

For Petitioner

: Mr.R.J.Karthick

For Respondents

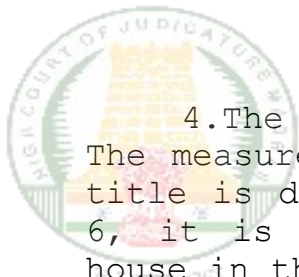
: Mr.H.Lakshmi Shankar

ORDER

This revision petition has been filed against the fair and decreetal order dated 30.08.2019 passed in I.A.No.2354 of 2018 in O.S.No.141 of 2015 on the file of Principal District Munsif Court, Dindigul District.

2.The petitioner/plaintiff had filed a suit in O.S.No.141 of 2015 for the relief of permanent injunction restraining the respondents/defendants and their men from interfering with her peaceful possession of the suit properties. Pending suit, the respondents/defendants filed the above I.A for appointment of advocate commissioner to note down the physical features of the suit properties which was allowed, against which, this revision is filed.

3.According to the petitioner, she claimed title over the schedule mentioned property by virtue of a sale deed dated 17.05.2002 in respect of the second schedule property and the respondents are neighbours to the petitioner's property and since the respondents/defendants demanded to sell a portion of the petitioner's property which was refused by the petitioner, the respondents started disturbing the petitioner and thereafter, the suit came to be filed.



4.The respondents deny all the allegations by the petitioner. The measurement of the properties claimed by the petitioner and the title is denied. According to them, though in the plaint paragraph 6, it is claimed that the petitioner/plaintiff has constructed a house in the second item of property, the schedule of property in the plaint does not specify any details of constructions in the two items of properties much less reference to any house. The suit property has been shown only as a vacant land in the plaint by suppressing the buildings standing in the property and this was specifically attacked by the respondents in paragraph 4 of the written statement by pointing out suppression of material facts. According to the respondents, the plaintiffs and the defendants are neighbours and they constructed a house in their portion of the properties where some allegations arose in respect of the pathway which was obstructed by the petitioner and in order to resolve the same, 5 days prior to the filing of the suit, the properties of the petitioner as well as the respondents were measured and it was found that there was certain encroachment made by the petitioner in the respondents' property and therefore, the construction of the petitioner by encroaching into the respondents' land was prevented by the respondents and after agreeing to remove the encroachment, the petitioner has filed the present suit disputing the same.

5.The learned counsel for the respondents/defendants would rely on the judgment of this Court that in cases of encroachment, though the petitioner has filed a suit for permanent injunction, advocate commissioner can be appointed and in this regard, he would rely on the judgments in Shanmugathai vs. Kamalammal and another reported in 2017 (2) CTC 353, Ponnusamy Pandaram vs. The Salem Vaiyappamalai Jangamar Sangam reported in 1985 98 LW 112, Velmurugan vs. Joseph reported in (2008) 6 CTC 282 and B.Amutha vs. Anandhi Sankara Narayanan reported in 2016 5 LW 658.

6.The learned Judge finding that the respondents/defendants have pleaded encroachment, ordered for appointment of advocate commissioner, where I do not find any infirmity. The judgments relied on by the respondents are applicable to the facts of the present case.

7.Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To

The Principal District Munsif,
Dindigul District.

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-6738[F] dated
23/02/2021)

ORDER MADE IN
CRP(MD)No.1182 of 2020
DATED : 22.02.2021

bala
AM/29/04/2021/3P/3C