



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2021

CORAM :

THE HON'BLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD)No.1511 of 2019

and C.M.P (MD)No.7964 of 2019

WEB COPY

1) John Peter

2) Jeyabalan

... Petitioners/Respondents/Defendants

vs.

Padmavathi

... Respondent/Petitioner/Plaintiff

Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 12.04.2018 in I.A.No.935 of 2017 in O.S.No.26 of 2017 on the file of the District Munsif Court, Kovilpatti.

For Petitioners : Mr.B.Rajesh Saravanan

O R D E R

Aggrieved by the allowing of the application for appointment of the advocate commissioner, this revision petition has been filed by the defendants.

2.The respondent/plaintiff filed O.S.No.26 of 2017 for permanent injunction against the revision petitioners/defendants in respect of the suit pathway. Pending suit, the respondent filed I.A.No.935 of 2017 for appointment of advocate commissioner to note down the encroachment put up by the revision petitioners/defendants in the suit common pathway and to note down the physical features of the suit pathway with the help of the Surveyor. The said I.A was allowed on 12.04.2018, against which, the present revision petition has been filed.

3.The learned counsel for the petitioners would state that in a suit for permanent injunction, commissioner cannot be appointed as it is only for collecting evidence and therefore, the Court below ought not to have allowed the commissioner application. Thus, he would pray for setting aside the impugned order.

4.Heard the learned counsel for the petitioners and the respondent.

5.Perusal of record shows that it was the specific contention of the respondent/plaintiff that the petitioners/defendants have encroached the suit pathway and had constructed a building and only if advocate commissioner is appointed, the Court would be able to find out whether the petitioners have encroached the suit pathway or



not. The petitioners' contention was that the suit was not for declaration and it was for permanent injunction and only to gather evidence, the respondent filed the application for appointment of advocate commissioner.

6. In a decision reported in 2016 (1) ALT 134 Jajula Koteswar Rao vs. Ravulapalli Masthan Rao, it has been held that where there is an allegation of encroachment of land, advocate commissioner can be appointed for local investigation, as mere oral evidence will not aid either party to decide the issue of encroachment and such appointment cannot be said to be for collection of evidence as the object of local investigation itself is to collect evidence.

7. It is not disputed that the suit property is a common pathway and the contention of the respondent/plaintiff that the petitioners/defendants have put up encroachments on the common pathway can be proved through the appointment of commissioner and such commission itself is to collect evidence as to whether there is any encroachment in the suit pathway or not and considering the same, the Court below has allowed the commissioner application, where I do not find any infirmity.

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

Sd/-

Assistant Registrar(Writs)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

bala/gns

To

The District Munsif,
Kovilpatti.

+1 CC to M/s.B.RAJESH SARAVANAN, Advocate (SR-5567[F] dated 17/02/2021)

ORDER MADE IN
C.R.P (MD) No.1511 of 2019
DATED : 15.02.2021

mj (CO)

TR(15.04.2021) 2P 3C