



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (NPD) (MD) No.2095 of 2014

and

M.P.(MD) No.1 of 2014

Arputha Raj

.. Petitioner/Appellant/
Petitioner

-vs-

1.Viswasam
2.Jesurethinam

.. Respondents/Respondents/
Respondents

Prayer :- Petition filed under Article 227 of the Constitution of India against to set aside the order and decretal order dated 04.09.2014 of the Subordinate Judge, Padmanabhapuram, made in I.A.No.5 of 2014 in A.S.No.42 of 2013.

For Petitioner : Mr.K.N.Thampi

For Respondents : Mr.M.P.Senthil

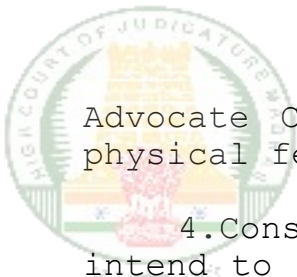
ORDER

Challenging the order, dated 04.09.2014 made in I.A.No.5 of 2014 in A.S.No.42 of 2013 passed by the learned Sub Judge, Padmanabhapuram, the petitioner/appellant is before this Court.

2.The impugned application has been filed seeking appointment an Advocate Commissioner.

3.The facts in brief are as follows:-

3.1.The revision petitioner had filed a suit in O.S.No.158 of 2010 on the file of the District Munsif, Eraniel, against the respondents herein for a declaration in respect of the pathway described as the 'C' Schedule property, for a mandatory injunction directing the respondents to remove the obstruction on the 'C' Schedule property and for a permanent injunction restraining the defendants from constructing any building over the basement available in the plaint 'B' Schedule property. Pending the suit, an



Advocate Commissioner had been appointed, who had noted down the physical features.

4.Considering the limited scope in this revision, I do not intend to delve into the detailed merits of the case, suffice it to state that the suit filed was dismissed and challenging the same, the petitioner has filed the appeal in A.S.No.42 of 2013. Pending the appeal, the revision petitioner has filed the impugned application to appoint an Advocate Commissioner to note down the physical features. The reason for requesting the appointment of an Advocate Commissioner has been set out in paragraphs 14 and 15 of the affidavit filed in support of the application. The said application was opposed by the respondents herein stating that pending the suit, an Advocate Commissioner had been appointed, who had noted down the physical features. That apart, the respondents would submit that the construction work in the property had been completed even before the filing of the appeal and the pathway, which has been mentioned by the lower court measuring 5¼ feet is still available without any obstruction. The learned Sub Judge, Padmanabhapuram, dismissed the said application, Challenging the same, the petitioner is before this Court.

5.Heard the learned counsel on both sides and perused the records.

6.It is true that earlier an Advocate Commissioner had been appointed and he had submitted his report with a plan. However, the petitioner would seek to have another Commissioner appointed, as the construction on the pathway had taken place after the suit had been dismissed and during the pendency of the appeal. By reason of this construction now undertaken, the 'C' schedule pathway has been obstructed denying free ingress or egress to the petitioner herein. This is a subsequent event. The respondents, on the contrary, have contended that the pathway is intact. In order to get to the bottom of the truth, I am of the view that the appointment of an Advocate Commissioner would help to break this deadlock. In these circumstances, the order 04.09.2014 is set aside and the application in I.A.No.5 of 2014 in A.S.No.42 of 2013 stands allowed. The learned Sub Judge, Padmanabhapuram, shall name the Advocate Commissioner, who shall visit the property, note down the constructions/alterations made after the dismissal of the suit by the lower court and the new constructions made on the 'C' schedule pathway in such a way obstructing the free ingress and egress of the 'C' schedule pathway and submit a report and plan with reference to the physical features of the property. The above exercise shall be completed within a fortnight from the date of receipt of a copy of this order.



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7.In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

abr

Note:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The Sub Court, Padmanabhapuram.

+1 CC to M/s.K.N.THAMPI, Advocate (SR-39436[F] dated 20/12/2021)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-39467[F] dated 20/12/2021)

C.R.P. (NPD) (MD) No.2095 of 2014

Dated: 17.12.2021

RD(28.01.2022) 3P 4C