



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.(PD) (MD) No.194 of 2017

and

C.M.P.(MD) No.890 of 2017

1.Bakiyam

2.Ramakrishnan

3.Senthil @ Senthilkumar

.. Petitioners/Respondents/
Defendants

-vs-

Manickam

.. Respondent/Petitioner/
Plaintiff

Prayer :- Petition filed under Article 227 of the Constitution of India to call for the records relating to the order dated 12.09.2016 made in I.A.No.579 of 2010 in O.S.No.159 of 2010 on the file of the District Munsif Court, Thuraiyur, Trichy District and set aside the same.

For Petitioners : Ms.B.Jameel Arasu
For Respondent : No appearance

ORDER

The defendants have filed this revision challenging the order dated 12.09.2016, passed by the learned District Munsif, Thuraiyur, in I.A.No.579 of 2010 in O.S.No.159 of 2010 in and by which the application filed by the respondent/plaintiff to appoint an Advocate Commissioner to note down the physical features of the suit property and submit a report along with the plan was allowed.

2.The facts in brief are as follows:-

2.1.The plaintiff had filed the suit in O.S.No.159 of 2010 on the file of the District Munsif, Thuraiyur, for a declaration of his title to the 'B' Schedule property and for a direction to the defendants to remove the encroachments made by them in the 'B' schedule property and handover possession to him; for a permanent injunction restraining the defendants from continuing with their construction work in the 'B' Schedule; and for costs.



2.2.It is the case of the plaintiff that the suit 'A' schedule property, belonged to one K.Ramasamy in which property, the plaintiff is in possession. The plaintiff was given a joint patta in respect of the suit 'A' Schedule property along with the said K.Ramasamy. The plaintiff is living in the tiled house constructed on the 'A' schedule property and tax is assessed to the plaintiff's son's name viz., Ramakrishnan.

2.3.It is the further case of the plaintiff that the defendants, taking advantage of the plaintiff's age and the fact that he does not have any support, encroached into the 'B' Schedule property on 15.07.2010 by resting rafters and putting up six cement pillars.

3.The defendants had filed a written statement denying the allegations contained in the plaint and seeking to have the suit dismissed.

4.The plaintiff came forward with the impugned application to have an Advocate Commissioner appointed, since it is his case that after the institution of the suit, the construction of the pillars etc., had taken place and the same had to be taken note of, as the suit is one for recovery of possession as well. The defendants had resisted the said application stating that there was no necessity to appoint an Advocate Commissioner and the attempt by the plaintiff was only to gather evidence, which cannot be done by the Advocate Commissioner. Therefore, they would seek to have the same dismissed.

5.The learned District Munsif, Thuraiyur, on considering the submissions made on both sides, allowed the application appointing an Advocate Commissioner to note down the physical features of the property with the help of a qualified Surveyor to find out the encroachments as well as the boundaries. Challenging the same, the revision petitioners/defendants are before this Court.

6.Heard the learned counsel for the petitioners.

7.The respondent/plaintiff, though served, has not entered appearance through counsel.

8.It is the case of the plaintiff that the defendants had put up the pillars and had also rested the rafters on the plaintiff's property. The defendants have not denied the said contention in so many words. However, one of the relief claimed is for recovery of possession. The report of the Commissioner would go a long way to assist the Court.

9.This Court is of the opinion that these encroachments have to necessarily be noted by the Advocate Commissioner and the learned



District Munsif, Thuraiyur, has rightly allowed the said application and the appointment of the Advocate Commissioner does not in any way prejudice the petitioner.

10. In these circumstances, the order dated 12.09.2016, passed by the learned District Munsif, Thuraiyur, in I.A.No.579 of 2010 in O.S.No.159 of 2010 does not deserve to be interfered with and accordingly, the same is confirmed. Consequently, this Civil Revision Petition is dismissed. Considering the fact that the suit is of the year 2010, the learned District Munsif, Thuraiyur, is directed to dispose of the suit within a period of four months from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// 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 District Munsif, Thuraiyur.

Copy to

The Registrar Judicial,
Madurai Bench of Madras High Court,
Madurai.

C.R.P. (PD) (MD) No.194 of 2017

Dated: 08.12.2021

NSN(CO)

KB(31.12.2021) 3P 3C