



C.R.P. No.293 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2022

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

CRP No.293 of 2021

&

C.M.P. No.14505 of 2022

1. Munusamy
2. Settu
3. Selvaraj
4. Kumar

... Petitioners

Vs.

Manicka Naidu (died)

1. Vijaya
2. Ramani
3. Uma Chandran
4. Loganathan
5. Jothi

... Respondents

Prayer: Civil Revision Petition filed under Section 115 CPC against the fair and decreetal orders dated 03.09.2020 passed in I.A. No. 651/2019 in O.S. No.125/2013 on the file of the Principal District Munsif Court, Thiruvannamalai.

For Petitioners

: Mr.P.G.Thiyagu



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ORDER

In this Civil Revision Petition, challenge is made to the fair and decreetal orders dated 03.09.2020 passed in I.A. No. 651/2019 in O.S.No.125/2013 on the file of the Principal District Munsif Court, Thiruvannamalai.

2. The revision petitioners are the defendants in the suit in O.S.No.125/2013. The respondents/plaintiffs filed the suit for declaration of title over the suit properties and for recovery of possession of the same and for costs. The revision petitioners/defendants filed a written statement and after settlement of issues, both the parties went for trial. The evidence on the side of the plaintiff is closed and thereafter when the matter was posted for defendants' side evidence, the defendants filed an application in I.A. No.651/2019 under Order XXVI Rule 9 CPC praying to appoint an Advocate Commissioner to inspect the suit properties and to note down its physical features. The plaintiffs filed a counter and after full contest, the learned Principal District Munsif, Thiruvannamalai, dismissed the said application vide his orders dated 03.09.2020, aggrieved over which, the



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present Civil Revision Petition is filed. The learned Principal District Munsif, dismissed the said application on the following grounds.

- i. The dispute between the plaintiffs and the defendants is with regard to a common passage measuring 3.25 ft on east-west and 33 ft on north-south, totally measuring 108 sq.ft.,
- ii. The plaintiffs have to prove the existence of such common passage by adducing acceptable oral and documentary evidence.
- iii. At the fag end of the trial the defendants have filed the present application in order to collect evidence and the same cannot be permitted.

3. Heard Mr.P.G.Thiyagu, the learned counsel for the revision petitioners. No representation on behalf of the respondents.

4. The contention of the learned counsel for the revision petitioners is that the defendants have migrated from some other village to the present village and they do not have any other form of evidence to



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substantiate their contention. According to him, the appointment of an advocate commissioner, would help the defendants to prove their case.

5. It is seen from the records that the plaintiffs have filed the suit for declaration of his title to the suit properties and for recovery of possession and their specific contention is that there is a common passage between their house and the house of the defendants. According to the defendants there is no such common passage. In the circumstances, the burden of proof is on the plaintiffs to show the existence of the common passage by adducing acceptable oral and documentary evidence. For this purpose an advocate commissioner cannot be appointed and the trial court has exercised its jurisdiction in the right perspective and I do not find any infirmity in the orders passed by the trial court.

6. In the result,

- i. the Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is also dismissed.



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ii. the fair and decreetal orders dated 03.09.2020 passed in I.A. No. 651/2019 in O.S. No.125/2013 on the file of the Principal District Munsif Court, Thiruvannamalai, is upheld.

iii. Since the suit is of the year 2013, the learned Principal District Munsif, Tiruvannamalai, is directed to dispose of the suit in O.S. No.125/2013 as expeditiously as possible.

16.11.2022

Index : Yes/No

Internet : Yes/No

Speaking/non speaking
bga

To,

The Principal District Munsif, Thiruvannamalai,



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R.HEMALATHA, J.,

bga

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