



C.R.P.No.3217 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.3217 of 2022
and C.M.P.No.17124 of 2022

K.Sankar

.. Petitioner

Vs.

1. Senbagam

2. Vetrivel

3. The Assistant Engineer, Office-III, PWD,
having office at Cuddalore Main Road,
Puducherry Municipality,
Mudaliarpeth, Puducherry - 04.

4. The Commissioner,
Puducherry Municipality,
Kamban Kalaiaragam,
Puducherry - 04.

.. Respondents

PRAYER: Civil Revision Petition filed under Section 227 of the Civil Procedure Code to set aside the fair and decretal order passed in I.A.No.1273 of 2021 in O.S.No.235 of 2019 dated 15.07.2022 by the Hon'ble II Additional District Judge at Puducherry.

For Petitioner : Mr.D.Padmanabhan



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For Respondents : No appearance

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ORDER

This Civil Revision Petition has been filed challenging the order passed by the Court below appointing Advocate Commissioner to visit the suit property and note down the physical features.

2. The petitioner herein filed a suit for declaration that petitioner is the absolute owner of the "D" schedule property and for permanent injunction restraining the respondents 1 and 2 from committing trespass in the Suit "D" schedule property. He also prayed for mandatory injunction directing the respondents 1 and 2 to restore the compound wall in their cost, which was demolished by them. The 2nd respondent filed written statement and the same was adopted by the 1st respondent. The respondents 1 and 2 also filed counter claim seeking declaration that suit "D" schedule property is a public pathway and also sought for permanent injunction restraining the petitioner herein from interfering with the respondent's right to ingress and egress over the suit "D" schedule property.



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3. Pending suit the respondents 1 and 2 filed an application seeking appointment of Advocate Commissioner for local inspection to note down the physical features and also to find out whether suit "D" schedule property is the only access to enter their property.

4. The said application was resisted by the petitioner by filing counter wherein they claimed that the respondents 1 and 2 have got alternative pathway to reach the property. The Court below proceeded to appointed Advocate Commissioner in order to find out whether there is any alternative pathway available to reach petitioner's property. In view of controversy in the pleadings of the parties with regard to the fact whether suit 'D' schedule property is the only ingress and egress to the respondents 1 and 2 to reach their property, appointment of Advocate Commissioner for local inspection is absolutely necessary.

5. Hence, this Court concur with the views expressed by the Court below to appoint an Advocate Commissioner. The report filed by the Advocate Commissioner will enable the Court to come to a conclusion with regard to the fact whether there is alternative pathway or not. Further if the order passed by the Trial Court is allowed



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to stand it will not cause any prejudice to the revision petitioner. Hence, this Court is not inclined to interfere with the order passed by the Court below. This Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

13.10.2022

Index: Yes/ No
Speaking Order / Non-Speaking Order
jai

To

1. The II Additional District Judge at Puducherry.
2. The Assistant Engineer, Office-III, PWD,
having office at Cuddalore Main Road,
Puducherry Municipality,
Mudaliarpeta, Puducherry - 04.
3. The Commissioner,
Puducherry Municipality,
Kamban Kalaiaragam,
Puducherry - 04.



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S.SOUNTHAR, J.
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