



CRP (MD) No. 2488 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14.12.2022

CORAM:

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

CRP (MD) No. 2488 of 2022

and

CMP (MD) No. 12194 of 2022

1. A. Perumal

2. P. Kannan

... Petitioners

Vs

Tirunelveli Hosuing Unit,
Through its Executive Engineer
and Executive Officer,
Tirunelveli -11

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 04.07.2022 passed in IA.No.4 of 2019 in OS.No.60 of 2019 on the file of the 2nd Additional District Munsif, Tirunelveli and allow the civil revision petition with cost.

For Petitioners : Mr.S.Mayil Vahanarajendran

For Respondent : Mr.A.Kannan



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ORDER

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This civil revision petition is filed as against the fair and decreetal order dated 04.07.2022 passed in IA.No.4 of 2019 in OS.No.60 of 2019 by the learned 2nd Additional District Munsif, Tirunelveli.

2.The petitioners are the plaintiffs in the suit in OS.No.60 of 2019. The petitioners have also filed an application under Order 26 Rule 9 to appoint an Advocate Commissioner to inspect the property and to file the report.

3.The learned Counsel for the petitioners submits that though the suit was filed for injunction, the trial Court has granted an order of interim injunction in his favour. After the grant of interim injunction by the trial Court, the defendant has damaged the property and therefore in order to assess damage, the petitioner has filed an application to appoint an Advocate Commissioner and the trial Court without considering the same dismissed the application.



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4.The learned Counsel appearing for the respondent submits that the petitioner is an encroacher and the suit is only for mandatory injunction.

5.This Court considered the rival submissions and perused the materials placed on record.

6.The main relief sought in the suit is only a mandatory injunction. The interim injunction was also granted. The petitioners have filed an application for appointment of advocate commissioner. The trial Court has given finding that the petitioners by seeking appointment of advocate commissioner cannot collect evidence in their support and they have to prove their case through documents. Moreover the petitioners have not stated the necessity for appointment of advocate commissioner to decide the case. This Court does not find any error in the orders of the trial Court.



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7. The civil revision petition is dismissed. No costs.

Consequently connected miscellaneous petition stands dismissed.

14.12.2022

dsk

To

II -Additional District Munsif,
Tirunelveli.



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B. PUGALENDHI, J.

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