



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 16.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

C.R.P (MD)No.1257 of 2015 (PD)

and

MP (MD)No.1 of 2015

WEB COPY

Rakku ... Petitioner/Petitioner/Plaintiff
Vs

Gunasekara Pandian (Died)

1.Udaya Prakash
2.Punitham
3.Selva Vinayagam
4.Pandiaraj ... Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair order and decreetal order dated 05.06.2014 made in I.A.No.13 of 2013 in O.S.No.186 of 2009 on the file of the Additional District Munsif cum Judicial Magistrate, Manamadurai by allowing this civil revision petition.

For Petitioner : Mr.K.Guhan
For Respondent : Mr.K.Sathiya Singh for
No.3 Mr.P.Senthur Pandian
For Respondent : No appearance
Nos.1, 2 and 4

ORDER

This civil revision petition has been filed as against the order of the Additional District Munsif cum Judicial Magistrate, Manamadurai.

2.The petitioner's husband and the defendants are the brothers. By way of a registered partition deed in the year 1981 they equally shared the property of their father. The petitioner filed a suit for declaration and for mandatory injunction on the cause of action that taking advantage of her position, the defendants attempted to occupy some portion of the petitioner's property and also attempted to put up construction thereon. The petitioner has also filed an application for appointment of Advocate Commissioner. The said application was opposed by the respondents/defendants stating that the above suit was filed in the year 2009 and this application for appointment of Advocate Commissioner was filed in the year 2013 that too without any valid reasons. However, the trial Court dismissed the said application on the ground that there is no proper explanation by the petitioner in his application for appointment of the Advocate Commissioner.



3.The learned Counsel for the petitioner fairly submits that though the application was not properly drafted, the cause of action for the suit itself is the defendants taking advantage of the petitioner's position attempted to occupy her property and also attempted to put up a construction.

4.The case of the petitioner rests on the registered partition deed dated 24.10.1981, where both parties have equally shared their property.

5.The learned Counsel for the respondents submits that even in the suit the petitioner has not mentioned the boundaries and therefore, the petitioner cannot file such an application for collection of evidence and therefore, opposed this application.

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

7.Considering the cause of action for filing of the suit that the respondents / defendants attempted to put up construction in the petitioner's property and also considering that this civil revision petition is pending from the year 2015, this petition is allowed. The order dated 05.06.2014 made in I.A.No.13 of 2013 in O.S.No.186 of 2009 on the file of the Additional District Munsif cum Judicial Magistrate, Manamadurai is set aside. The trial Court shall appoint an Advocate Commissioner and dispose of the suit within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

dsk

To
The Additional District Munsif
cum Judicial Magistrate,
Manamadurai.

+1 CC to M/s.K. GUHAN, Advocate (SR-26487[F] dated 17/06/2022)

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16.06.2022

SRK(CO)

GC(28.06.2022) 2P 3C

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