



CRP(PD)(MD)No.1852 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.1852 of 2021 and
CMP (MD) No.9935 of 2021

1.Karpagam
2.Alageshwari
3.Mariammal
4.Venkatasubramanian

... Petitioners

Vs

1.A.Murugesan
2.P.Pathmavathi
3.J.Gurushanthi
4.Sivasubramaniam

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order made in I.A.No.1 of 2021 in I.A.No.2 of 2019 in O.S.No.407 of 2019, dated 21.10.2021, on the file of the District Munsif Court, Rajapalayam.

For Petitioners : Mr.M.Thirunavukkarasu
For Respondents : No appearance



CRP(PD)(MD)No.1852 of 2021

ORDER

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This Civil Revision Petition is filed as against the fair and decreetal order passed by the learned District Munsif, Rajapalayam in I.A.No.1 of 2021 in I.A.No.2 of 2019.

2.The respondents/plaintiffs have filed a suit in O.S.No.407 of 2019 for declaration and for mandatory injunction for removing certain structures made by the petitioners/defendants in the suit schedule property. The petitioners/defendants have taken out an application in I.A.No.2 of 2019, for appointment of Advocate Commissioner. The said application was allowed by the trial Court on 25.02.2021 and the Advocate Commissioner has also been appointed and he inspected the suit schedule property with the help of a civil engineer. Being not satisfied with the same, the petitioners/defendants have taken out an another Interlocutory Application in I.A.No.1 of 2021 with a further claim that the Advocate Commissioner shall be appointed to inspect the suit schedule property with the help of Taluk Surveyor and also along with an Engineer of PWD Department. The said application was partly allowed by the trial court with a direction to



CRP(PD)(MD)No.1852 of 2021

WEB COPY

examine the property by the Advocate Commissioner with the help of Taluk Surveyor alone and the request of the petitioner for assessing the building with the help of PWD Engineer has been rejected on the ground that the suit itself was filed for declaration with regard to a common pathway and therefore, there is no necessity for PWD Engineer to assist the Advocate Commissioner. Hence, the petitioner has preferred this Civil Revision Petition.

3.The learned counsel appearing for the petitioner submits that the trial court while allowing the application filed by the petitioners in I.A.No. 2 of 2019 ordered for an appointment of Advocate Commissioner and also passed an order to inspect the property with the help of a civil engineer alone. The apprehension of the petitioners is that if a private civil engineer inspects the property, the measurement may not be accurate and it would be appropriate to assess the property with an engineer of PWD and therefore the Interlocutory Application in I.A.No.1 of 2021 has been preferred and the same was rejected by the trial Court stating that the suit itself is only for declaration of common pathway. According to the learned



CRP(PD)(MD)No.1852 of 2021

WEB COPY

counsel for the petitioners, the suit has been filed not only for declaration of common pathway but also for mandatory injunction to remove the stair case put up by the plaintiffs. Only for assessing the age of the building, objection has been made that the application was originally filed for appointment of Advocate Commissioner and considering the same, the trial Court has also passed an order appointing Advocate commissioner and assess the property with the help of a civil engineer. Hence, the order of the trial Court may be modified to an extent that the property may be assessed by the Advocate Commissioner with the help of a PWD Engineer.

4. Though notice was ordered to the respondents, proof filed and name of the respondents also printed, there is no representation for the respondents and therefore, this Court considering the submissions of the petitioners' counsel and perusing the documents placed before this Court, is inclined to pass order.

5. The petitioners/defendants filed an application in I.A.No.2 of 2019, under Order XXVI Rule 9 seeking appointment of Advocate



CRP(PD)(MD)No.1852 of 2021

WEB COPY

Commissioner and the trial Court by order dated 25.02.2021, ordered for assessing the suit schedule property with the help of a civil engineer. The apprehension of the petitioners is that the private civil engineer may not give accurate measurement and the report given by him may not be taken into confidence as that of assessment made by the PWD Engineer. Hence, the petitioners/defendants filed another application in I.A.No.1 of 2021 for appointment of Advocate Commissioner with the help of Taluk Surveyor and also along with an Engineer of PWD Department. The trial court has partly allowed the application permitting the request of the petitioners for assessing the property with the help of Taluk Surveyor. However, rejected the plea of the petitioner for assessing the property by PWD engineer on the ground that the suit is filed only for declaration with regard to the suit schedule property.

6.Perusal of the plaint reveals that the suit is filed for the relief of declaration and for mandatory injunction. Considering the same, it is appropriate to order for assessment of the property by Advocate Commissioner with the help of PWD engineer instead of assessing the



CRP(PD)(MD)No.1852 of 2021

property through a private civil engineer, provided the petitioners shall pay necessary cost to the PWD engineer, who has to accompany the Advocate Commissioner.

7. Accordingly, this Civil Revision Petition is allowed. The Advocate Commissioner shall assess the suit schedule property with the help of PWD engineer and the necessary cost shall be paid by the petitioners/defendants to the PWD engineer. No costs. Consequently, connected Miscellaneous Petition is closed.

29.06.2022

Index : Yes / No.

Internet : Yes / No.

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To

The District Munsif Court, Rajapalayam.



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CRP(PD)(MD)No.1852 of 2021

B.PUGALENDHI, J.

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Order made in
CRP(PD)(MD)No.1852 of 2021

29.06.2022