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**C.R.P(MD)No.2136 of 2021**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.01.2022

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THE HONOURABLE **MS.JUSTICE** P.T.ASHA

**C.R.P (MD)No.2136 of 2021**

**and**

**C.M.P. (MD)No.11316 of 2021**

1.Mahendran

2.Hariprasath

... Petitioners/Respondent 1&2/

Defendant 1 & 2

Vs.

1.S.Maduraipandiyam

2.The Commissioner,

Allinagaram Municipality,

Theni, Theni District. ... Respondents/Petitioner/ Plaintiff

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order passed in I.A.No.2 of 2020 in O.S.No.91 of 2020 dated 10.11.2021 on the file of the District Munsif Court, Theni, by allowing this Civil Revision Petition.

For Petitioners

: Mr.A.R.Kannappan

### **ORDER**

Aggrieved by the appointment of an Advocate Commissioner, to note down the physical features of the suit schedule property with the help of a surveyor and by perusing the settlement deed and the revenue records, the revision petitioners / defendants are before this Court. The facts in brief are herein below narrated.

2.The first respondent herein had filed the suit in O.S.No.91 of 2020 on the file of the District Munsif, Theni, to declare the portion described as ABCD in the plaint and which has been encroached by the 1 and 2 defendants as the property belonging to the 1<sup>st</sup> respondent /plaintiff and for a consequential injunction and thereafter pass a mandatory injunction to remove the encroachments put up by the defendants 1 and 2 in the portion earmarked as ABCD.

<https://heservices.ecourts.gov.in/hcservices/>



Along with the plaint, the respondent had also filed the impugned application.

3. In the affidavit filed in support of the said petition, the plaintiff would contend that on the East side of the plaintiff's property, there was a four feet pathway and abutting the pathway, the defendants had their property. The defendants were putting up a new construction and while putting up the construction, the defendants have constructed across the four feet pathway and into the plaintiff property. The encroachment by the defendants was to an extent of 2 ½ feet West and 20 ft North-South. The plaintiff would submit that he is working and residing at Coimbatore and the first defendant had assured that they would not encroach into the plaintiff's property, however this assurance had been observed in the breach and the defendants had constructed in the plaintiff's property. Therefore, there was a necessity to measure the property to identify the extent of the encroachment. The respondent herein had filed a counter objecting to the appointment of an Advocate Commissioner.

4. The learned District Munsif, Theni, after hearing either party, allowed the said application and appointed an Advocate Commissioner, to take the assistance of an surveyor, refer to as per the settlement deed and the revenue records, note down the physical features, measure the property and thereafter submit the report in plaint. It is this order which is challenged in this Civil Revision Petition.

5. Heard the learned counsel for the petitioners.

6. The only grievance put forward by the revision petitioners/defendants is that the learned Judge ought to have directed the Advocate Commissioner to inspect and measure the property of the defendants as well. Such a defence has not been taken in the grounds and on the contrary, the defendants have sought to have the said application dismissed. This argument is made for the first time before this Court.

7. Be that as it may, the Advocate Commissioner with the help of the surveyor, is measuring the suit properties on the basis of the revenue records and also referring to the settlement deed executed in their favour. It is well open to the revision petitioner/defendant to give necessary memo of instructions to the Advocate Commissioner. In these circumstances, there is no necessity to measure the defendant's property as well since the petitioner has only sought to measure the suit property and note down the encroachment there upon. The learned Judge has given adequate reasons for allowing the application and I am not inclined to interfere with the order.



8. Accordingly, this Civil Revision Petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

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/ /2022

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO:

1.The District Munsif, Theni.

+1 CC to M/s.A.R.KANNAPPAN, Advocate ( SR-2878[F] dated 28/01/2022 )

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**28.01.2022**

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