



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S. ANANTHI

C.R.P. (PD) (MD)No.2080 of 2017
and CMP (MD)No.10332 of 2017

M.Ganesan

... Petitioner/Petitioner/
Plaintiff

Vs

1.Mubarak John

2.Akbar John

... Respondents/Respondents/
Defendants

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the Fair and Decreetal order passed in I.A. No. 228 of 2017 in O.S. No. 4 of 2016 on the file of the Additional District Munsif Court, Thoothukudi by allowing this Civil Revision Petition.

For Petitioner : Mr.P.M.Vishnuvarthanan

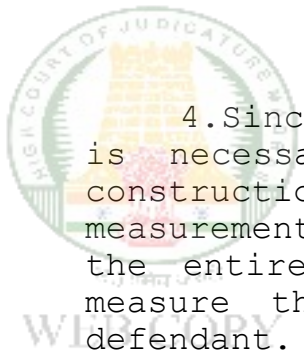
For Respondents : Mr.C.Arumugam
for M/s.K.Muthumalai

ORDER

To set aside the Fair and Decreetal order passed in I.A. No. 228 of 2017 in O.S. No. 4 of 2016 on the file of the Additional District Munsif Court, Thoothukudi, the revision petitioner has filed this Civil Revision Petition.

2.Heard the learned counsel appearing for both sides and perused the materials available on record.

3.Originally, the suit in O.S.No.4 of 2016 was filed for the relief of declaration and mandatory injunction. I.A.No.228 of 2017 was filed by the petitioner/plaintiff to appoint an Advocate Commissioner to measure the suit property. The respondent has stated in his counter that already the petitioner/plaintiff accepted the rights of the defendant in the cross examination dated 15.12.2004 and the Commissioner need not be appointed to measure the property. Accepting the counter, the trial Court has dismissed the application.



4.Since the suit is for mandatory injunction, the Commissioner is necessary to measure the property, especially whether the construction made in the pathway is old or new one and also measurement of encroachment and also Commissioner has to note down the entire physical feature. The Advocate Commissioner has to measure the pathway and the properties of both plaintiff and defendant.

5.Considering the above facts, this Civil Revision Petition is allowed and the Fair and Decreetal order passed in I.A. No. 228 of 2017 in O.S. No. 4 of 2016 passed by the learned Additional District Munsif, Thoothukudi is set aside. The learned Additional District Munsif, Thoothukudi is hereby directed to appoint an Advocate Commissioner to note down the physical features of the suit property and disputed path way and to measure the properties of both plaintiff and defendant, with the help of a Surveyor. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PNM

To

1.The Additional District Munsif, Thoothukudi

+1 CC to M/s.P.M. VISHNUVARTHANAN, Advocate (SR-21798[F] dated 27/04/2022)

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