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CRP No. 4078 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.11.2023

CORAM :

THE HON'BLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.4078 of 2023
and
CMP.No.24966 of 2023

S.Karunanidhi

... Petitioner

Versus

Mani @ Jegannathan

... Respondent

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 31.10.2022 made in I.A.No.3 of 2022 in O.S.No.121 of 2019 on the file of the Subordinate Court, Mettur, Salem District.

For Petitioner : Mr. R.Rajadurai
for Mr.V.S.Sivanu Pandian

ORDER

The petitioner has filed this petition to set aside the fair and decretal order dated 31.10.2022 made in I.A.No.3 of 2022 in O.S.No.121 of 2019 on the file of the Subordinate Court, Mettur, Salem District.

2. Heard Mr. R.Rajadurai, learned counsel for Mr.V.S.Sivanu Pandian, learned counsel for the petitioner and perused the materials available on record.



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3. Before the trial Court the plaintiff has filed an I.A.No.3 of 2022 under Order XXVI Rule 9 of CPC r/w Section 151 of CPC for the relief of appointment of Advocate Commissioner to note down the physical features of the property and to survey the same with the help of Surveyor and VAO and fix the boundaries of the property. As a plaintiff, he filed a suit for permanent injunction and other consequential reliefs against the defendant. The defendant also appeared and contested the suit. Before the trial Court the revision petitioner has filed an application to appoint Advocate Commissioner in order to prove the existence of the pathway, which is under dispute. The learned trial Judge dismissed the said application, on hearing the objection raised by the defendant / respondent stating that the plaintiff has not proved whether there is an extent of any pathway through documents and only by adducing the evidence it can be decided. Therefore there is no necessity to appoint the Advocate Commissioner. Challenging the said findings the revision petitioner has preferred this revision.

4. The learned counsel for the revision petitioner / plaintiff submitted that by filling written statement, the defendant has denied the plaintiff's claim and also contended that there is no common lane in existence in front of the property. Hence, necessity arose for the plaintiff to appoint Advocate



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Commissioner to note down the physical feature of the suit property.

Considering the main relief of the suit, the Advocate Commissioner's report in respect of the Physical feature of the lane would help the Court to adjudicate the issues between the parties. But the learned trial Judge has erroneously held that, so far as, the existence of pathway has not been proved by the plaintiff through document and rejected the petition and the same can be adduced and produced at the time of trial. Hence he prays that, he is entitled for an appointment of the Advocate Commissioner to note down the physical features, which will minimize the burden of the Court. Without considering the fact, the learned trial Judge erroneously dismissed the application, therefore this Court is inclined to set aside the finding rendered by the learned trial Judge in I.A.No.3 of 2022 in O.S.No.121 of 2019 and the I.A is allowed.

5. However, the learned trial Judge is directed to appoint the Advocate Commissioner within a period of two weeks from the date of receipt of a copy of this order and to produce the report within a period of 4 weeks from the date of appointment and thereafter the learned trial Judge is directed to proceed with the matter as per manner known to law.

T.V.THAMILSELVI, J.



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6. Accordingly, this Civil Revision petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

21.11.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No

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To

1. The Subordinate Judge, Mettur, Salem District.
2. The Section Officer,
VR-Section, High Court of Madras.

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