



CRP No.1243 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.11.2023

CORAM :

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

Civil Revision Petition No.1243 of 2023
and
CMP.No.8428 of 2023

K.Ganesamoorthy

... Petitioner

Versus

1.S.Muruganantham
2.Padmanaban
3.The Commissioner,
Tiruppur City Municipal Corporation,
Tiruppur.

... Respondents

Civil Revision Petition filed Under Section 227 of Constitution of India, praying to set aside the order passed in I.A.No.598 of 2022 in O.S.No.217 of 2011 dated 15.12.2022 by the learned District Munsif Court, Tiruppur.

For Petitioner : Mr. J.Franklin

ORDER

The petitioner has filed this petition to set aside the order passed in I.A.No.598 of 2022 in O.S.No.217 of 2011 dated 15.12.2022 by the learned District Munsif Court, Tiruppur.



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WEB COPY 2. Heard, Mr. J.Franklin, the learned counsel for the petitioner and perused the materials available on record.

3. Before the trial Court, the petitioner / plaintiff has filed a suit for mandatory injunction and other consequential reliefs. On pending of the suit the plaintiff has filed an I.A.No.589 of 2022 in O.S.No.217 of 2011, under Order XXVI Rule 9 of CPC, to appoint Advocate Commissioner to note down the physical features of the suit mentioned property. The said application was dismissed by the learned trial Judge holding that to drag on the proceedings the application has been filed by the petitioner. Aggrieved the same the petitioner has filed this Civil Revision Petition.

4. The learned counsel for the revision petitioner submitted that the cause of action arose, on 15.04.1971 when the one Subramaniam Chettiar was purchased the property, on 15.09.1980 when the one T.R.Ponnusamy was purchased the property from the Subramaniam Chettiar, on 24.08.2001 when the plaintiff had purchased the property, on 31.08.2010 when the Commissioner Tirupur Municipal Corporation had issued a Survey field Register, on 05.12.1955 when the defendants vendor purchased the property ,



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on 01.03.2011 when the plaintiff and other publics were approached the 3rd defendant to remove the encroachment and all other subsequent dates all are situated at Chandra Colony, Thottipalayam Village, Tirupur Town and Taluk, and declaring that the 20 feet width in North Sourt, 400 feet in east and west i.e., CDEF as mentioned in the common road in S.F.No.531/2, there is no other alternative relief the plaintiff has come forward to file this suit for declaration and mandatory injunction against the defendants 1 & 2. Thereafter, the petitioner has filed an application for appointment of Advocate Commissioner to note down the physical features of the suit property.

5. The learned counsel for the respondents raised strong objection to appoint Advocate Commissioner, to measure the suit property. He further submitted that the learned trial Judge rightly concluded and dismissed the I.A.No.598 of 2022 which needs no interference and prays to dismiss this Civil Revision petition.

6. On seeing the facts that the suit property is path way and to prove the same the petitioner wants to appoint Advocate Commissioner to note down the physical features, to that extent, he come forward with the application. Without considering the fact, the learned trial Judge erroneously



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dismissed the application, therefore this Court is inclined to set aside the finding rendered by the learned trial Judge in I.A.No.598 of 2022 in O.S.No.217 of 2011 and the I.A is allowed.

7. 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 trial Judge is directed to proceed with the matter as per manner known to law.

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

16.11.2023

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

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To



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1. The District Munsif, Tiruppur.

2. The Section Officer,
VR-Section, High Court of Madras.



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