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C.R.P.No.2325 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.2325 of 2019
and C.M.P.No.15172 of 2019

1. R.Devaraj (died)
 2. Ellammal
 3. Gopinath
 4. Ramani @ Hema
 5. Kalamani
- (P2 to P5 brought on record as
Legal heirs of the deceased
sole petitioner viz., R.Devaraj
vide order of this Court dated
09.01.2023 made in C.M.P.
Nos. 383, 384 & 386 of 2023
in C.R.P.No.2325 of 2019)

... Petitioners

Vs.

P.Pandidurai

... Respondent

Prayer :- Civil Revision Petition is filed under Section 227 of the Constitution of India, to set aside the fair and decreetal order dated 12.02.2019 in I.A.No.53 of 2019 in O.S.No.861 of 2012 on the file of the learned II Additional District Munsif, Salem and allow the Civil Revision Petition.

For Petitioners : Mr.R.Sunil Kumar



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For Respondent : Mr.P.Jagadesan

ORDER

This Civil Revision Petition has been filed as against the fair and decreetal order dated 12.02.2019 passed by the learned II Additional District Munsif, Salem, in I.A.No.53 of 2019 in O.S.No.861 of 2012, thereby dismissing the petition filed by the petitioner for appointment of Advocate Commissioner.

2. The deceased petitioner is the defendant in the suit filed by the respondent in O.S.No.861 of 2012 for permanent injunction in respect of the suit schedule property. The respondent filed the said suit alleging that the deceased petitioner had obstructed the usage of the pathway. Further the respondent claimed right to the pathway on the basis of the decree passed in O.S.No.559 of 1982. The specific case of the respondent is that the deceased petitioner does not own any property on the north of his property.



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3. However, the deceased petitioner denied the same and stated that the vacant space on the north of the respondent's property is 16 feet and he has claimed the pathway of 10 feet. Therefore, the remaining extent belongs to the deceased petitioner herein. Hence the deceased petitioner filed an application in I.A.No.53 of 2019 for appointment of Advocate Commissioner to inspect the property and to note down the physical features of the suit schedule property. The trial Court dismissed the said petition as against which the present Civil Revision Petition.

4. Heard Mr.R.Sunil Kumar, learned counsel appearing for the petitioners and Mr.P.Jagadesan, learned counsel appearing for the respondent.

5. Though the respondent filed suit for permanent injunction, in order to help the Court, the Advocate Commissioner has to be appointed to survey the property with the help of surveyor. Accordingly, the order dated 12.02.2019 passed by the learned II Additional District Munsif, Salem, in I.A.No.53 of 2019 in O.S.No.861 of 2012, is hereby set aside. The trial Court



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viz., the learned II Additional District Munsif, Salem is directed to appoint an Advocate Commissioner to measure the suit property along with the respective documents and note down the physical features of the suit schedule property and report before the Court below. On receipt of the same, the trial Court is directed to dispose the suit within a period of three months from the date of receipt of the Advocate Commissioner's report.

6. With the above directions, the Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

09.01.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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To

1. The II Additional District Munsif,
Salem.



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G.K.ILANTHIRAIYAN, J.

rts

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and C.M.P.No.15172 of 2019

09.01.2023