



C.R.P(PD)No.1607 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2023

CORAM:

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P(PD)No.1607 of 2020
and C.M.P.No.9707 of 2020

Kalaivani

...Petitioner

vs.

1.Singaram

2.Rathinam

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decretal Order of the District Munsif Court, Attur dated 12.10.2018 passed in I.A.No.297 of 2018 in O.S.No.184 of 2013.

For Petitioner	:	Mr.P.Jagadeesan
For Respondents	:	Mr.A.E.Ravichandran

ORDER

The Civil Revision Petition has been filed against the Fair and Decretal Order of the District Munsif Court, Attur dated 12.10.2018 passed in I.A.No.297 of 2018 in O.S.No.184 of 2013.



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2.The brief facts of the case is that the plaintiff in O.S.No.184 of 2013 is the petitioner in I.A.No.297 of 2018 which was filed under Order 26 Rule 9 and Section 151 of C.P.C. praying to appoint an Advocate Commissioner to visit and measure the physical features of the suit property as per the Sale Deed. The trial Court by its order dated 12.10.2018 had dismissed the interlocutory application filed by the petitioner on the ground that the petitioner has not satisfied the Court. Aggrieved by the same, the petitioner has filed this present petition.

3.Learned counsel for the petitioner submitted that the lower Court failed to see that the respondents had violated the interim injunction and obliterated the water channel, ridges and the pathway. Therefore, it is absolutely necessary to appoint an Advocate Commissioner to note down the physical features of the suit property. The reasons adduced by the lower Court for dismissing the application for appointment of Advocate Commissioner is totally erroneous and unsustainable in law. He further submitted that the lower Court failed to note that no prejudice would be caused to the respondents if the Advocate Commissioner is appointed. Hence, he prayed this Court to allow the above petition.



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4.Learned counsel for the respondent has filed a counter in

I.A.No.297 of 2018 wherein it has been stated that there is no any single piece of evidence to prove the allegations against the respondents/defendants in the said application and the allegations stated against the respondents/defendants are baseless and groundless. He further submitted that the petitioner/plaintiff has not stated any boundary dispute to measure the suit property and identification of the suit property or trying to alter the character and nature of the suit property and there is no such averments in the petition. Hence, he prayed this Court to dismiss the said application.

5.Heard learned counsel for the petitioner and learned counsel for the respondents and perused the material available on record.

6.On perusal of the typed set of papers, according to the petitioner, the respondents obliterated the existing vaikkal, varappu and usage in the suit property, in which the respondents does not have any valid right. The petitioner has also stated that the trial Court had granted an interim injunction in favour of the petitioner which is still in force. Meanwhile



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the respondents are trying to construct a roof shed due to which the petitioner is unable to cultivate the agriculture land. Hence filed the present petition to appoint an Advocate Commissioner. The trial Court held that there is no necessity to appoint an Advocate Commissioner in this petition and dismissed the application filed by the petitioner on 12.10.2018.

7.Considering the facts and circumstances of the case and the submissions made by the learned counsel appearing on either side, this Court is of the view that no prejudice would be caused to the respondents if the Advocate Commissioner is appointed and this Court is inclined to allow the petition. Accordingly, this Civil Revision Petition is allowed and the order passed by the District Munsif Court, Attur dated 12.10.2018 is set aside. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Index: Yes/No

Speaking Order/Non-Speaking Order
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V.BHAVANI SUBBAROYAN, J.

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