



C.R.P.No.2101 of 20__

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

**C.R.P.No.2101 of 2023
and
C.M.P.No.12841 of 2023**

D.Balasubramanian

... Petitioner

Vs.

R.Kandasamy

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair final order dated 23.03.2023 passed in I.A.No.3 of 2022 in O.S.No.98 of 2018 on the file of the District Munsif Court, Sulur and allow the Civil Revision Petition.

For Petitioner : Mr. S.Gunaseelan

ORDER

This Civil Revision Petition has been filed against the fair and final order dated 23.03.2023 in I.A.No.3 of 2022 in O.S.No.98 of 2018 on the file of the District Munsif Court, Sulur.



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2. The petitioner is the plaintiff and the respondent is the defendant in the suit filed by petitioner in O.S.No.98 of 2018 on the file of the District Munsif, Sulur for permanent injunction, restraining the defendant from interfering with his peaceful possession and enjoyment of the suit property. Thereafter, the respondent filed a petition in I.A.No.3 of 2022 to appoint an Advocate Commissioner to note down the physical features in and around the suit property and to measure the same with the assistance of a Taluk Surveyor and to file detailed report and plan. Further, the said petition filed by the respondent was allowed by the Trial Court on 23.03.2023. Aggrieved by the same, the petitioner filed the present Civil Revision Petition.

3. The learned counsel for the petitioner submitted that the respondent was examined as P.W.1 and he was partly cross examined by the respondent's side, which is admitted. The other allegation put forth is that the petitioner during cross examination has stated that the suit pathway is only access and further the respondent has encroached the pathway, is true and correct. He further submitted that the common pathway i.e the suit property is also the respondent's property of all separately sub-divided. The petitioner and the respondent properties are not adjoining properties and the



common pathway is situated between their property. He also submitted that the petition for appointment of Advocate Commissioner to note down the physical features in and around the suit property is filed only to prolong the case, because there is no dispute with regard to the title of the suit property and the learned trial Judge ordered appointment of the Advocate Commissioner, which is nothing but collection of evidence. The said order is no way connected with the dispute. Therefore, the learned counsel for the petitioner prays to set aside the impugned order passed by the Court below.

4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. The only course to solve the dispute between the parties is to measure the suit property and common pathway and hence, it was necessary for the Court below to appoint an Advocate Commissioner, which has rightly been done. Accordingly, this Court, while confirming the order with regard to the appointment of Advocate Commissioner, modifies the same to the effect that the Advocate Commissioner shall measure and note down the physical features only to the extent where the common pathway is found



C.R.P.No.2101 of 20__

and the defendant's house and the learned Advocate Commissioner shall report as to how the encroachment in common pathway would affect the petitioner's ingress and egress to the property.

6. With the above modification, this Civil Revision Petition is disposed of. Consequently, the connected Miscellaneous Petition is closed.
No costs.

05.07.2023

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

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To

1. The District Munsif Court, Sulur.
2. The Section Officer,
V.R.Section,
High Court of Madras.



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C.R.P.No.2101 of 20__

V.BHAVANI SUBBAROYAN,J.

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C.R.P.No.2101 of 2023

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