



CRP No.2778 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2023

CORAM :

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CRP No.2778 of 2022
and C.M.P.No.14627 of 2022

1.V.Periyan
2.Krishnamoorthy
3.Venkatachalam

....Petitioners

-Vs-

1.Ramar
2.Vellayi
3.Mathaiyan
4.Pachiammal
5.Thangammal
6.Jeyapaul

....Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India, challenging the fair and decreetal order dated 28.02.2022 in I.A No.3 of 2019 in O.S No. 463 of 2019 on the file of the I Additional District Munsif Court, Salem.

For Petitioners : Mr.D.Shivakumaran

For Respondents : No appearance



ORDER

This Civil Revision petition has been filed challenging the fair and decreetal order dated 28.02.2022 in I.A No.3 of 2019 in O.S No. 463 of 2019 on the file of the I Additional District Munsif Court, Salem.

2. Heard the learned counsel for the petitioners. Despite serving notice, there is no representation on the side of the respondents.

3. The learned counsel for the petitioners would submit that they have filed an application in I.A.No.3 of 2019 in O.S.No.463 of 2019 praying to appoint an Advocate Commissioner to note down the physical features and to note down encroachments with the help of a surveyor and the same was dismissed by the trial court stating that when there is no relationship between landlord and tenant, the filing of application to appoint Advocate Commissioner is unwarranted one. Learned counsel for the petitioner submits that they filed suit for declaration and for removal of encroachment in the Item No.1 of the suit schedule property and they filed the application to appoint Advocate Commissioner.



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4. On considering the fact that the plaintiffs approached the Court for removal of the encroachment against the defendants and to prove encroachment with the help of the surveyor, the report of the commissioner will minimize the case of the plaintiff with regard to mandatory rejection. Therefore, the reason assigned by the petitioner is justifiable.

5. In the light of the above submissions, the Civil Revision Petition is allowed setting aside the the fair and decreetal order dated 28.02.2022 in I.A No.3 of 2019 in O.S No. 463 of 2019 on the file of the I Additional District Munsif Court, Salem. No costs. Consequently connected civil miscellaneous petition is closed.

30.03.2023

Index : Yes/No
Internet : Yes/No
mtl

To

- 1.The I Additional District Munsif Court, Salem.
- 2.The Section Officer, VR Section, High Court, Madras.

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