



C.R.P.(PD).No.2812 of 2019

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2023

CORAM : **JUSTICE N.SESHASAYEE**

C.R.P.(PD).No.2812 of 2019
and C.M.P.No.18460 of 2019

1.R.Anbalagan
2.Indhirani
3.R.Kumar
4.R.Govindharaj
5.A.Sakthivel

... Petitioners

Vs.

1.M/s.Celebrity Hi-Tech Constructions Pvt Ltd.,
Rep. by its Managing Director,
P.Ashok

2.G.Rajkumar
3.P.Ashok
4.P.Anandhababu
5.S.Prabakaran

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, seeking to set aside the order of the IV Additional District Munsif Court, Salem District dated 07.06.2019 made in I.A.No.2 of 2019 in O.S.No.72 of 2019.

For Petitioners	: Mr.R.Venkatesh
For R1 to R3	: Mr.V.Sekar
For R4 & R5	: No Appearance



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ORDER

The revision petitioners herein are the plaintiffs who have laid a suit seeking a right of pathway over "B" Schedule property and also for noting down the physical features of "A" Schedule property.

2.The trial Court has passed a partial order, and limited it to a local inspection by a Commissioner of "A" Schedule property alone, and the order is silent about the "B" Schedule property. This is now under challenge in this revision.

3.Heard both sides.

4.While the learned counsel for the revision petitioners stuck to his line of contention that was raised before the trial Court, the learned counsel for the respondents submitted that "B" Schedule property indeed is a pathway in a gated community, and the plaintiffs who have reserved their rights vis-a-vis "A" Schedule property, have not chosen to do anything with regard to the "B" Schedule property, and that it is an arm twisting tactics of the plaintiffs to gain access into the gated community.



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5.This Court appreciates the submission of the learned counsel for the respondents, but then the objection raised has to wait for its consideration to another day. It is a line of defence which has to be tested during the trial, but so far as the present revision is concerned, it is only appropriate that the Commissioner appointed by the trial Court should also note down the alleged pathway in "B" Schedule property. The title of the plaintiffs to use the same as a pathway will not be affected by the Commissioner visiting the property and noting down the physical features.

6.This Court is informed that the learned Commissioner appointed by the trial Court has not visited even the "A" Schedule property thus far the last four years. The learned trial Judge is now required to consider recalling its warrant and appoint some Advocate with standing in the civil side and regular in his appearances before the civil Court, as an Advocate Commissioner, for the purpose indicated above, and if required with the assistance of an official surveyor, on such remuneration that it deems appropriate.



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N.SESHASAYEE.J.,

Anu

7.In view of the above, the Civil Revision Petition stands allowed. No Costs. Consequently, the connected miscellaneous petition is closed.

24.03.2023

Anu
Index : yes / no
Internet : yes / no
Speaking / non speaking

To:
1.The IV Additional District Munsif
Salem District.

2.The Section Officer
VR Section, High Court, Chennai.

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