



C.R.P.(PD)No.2826 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.2826 of 2019
and C.M.P.No.18518 of 2019

1.Angammal

2.Varadharaj

3.Dhanalaksmi

4.Lakshmanan

.. Petitioners

Vs.

1. Veeran

2.V.Muniraj

3.Arunraj

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 08.11.2017 made in I.A.No.760 of 2017 in I.A.No.643 of 2017 in O.S.No.174 of 2017 on the file of the District Munsif Court, Attur.



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For Petitioners : Mr.T.Ganesan

For Respondents : Mr.R.Prabakar
for Mr.M.R.Vivekanandan

ORDER

The revision arises against an order passed in I.A.No.760 of 2017 in I.A.No.643 of 2017 in O.S.No.174 of 2017 on the file of the District Munsif Court, Attur.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondents. I have carefully gone through the records.

3. The civil revision petitioners are the plaintiffs and the respondents are the defendants. The suit is for bare injunction with respect to a passage way. Item No.1 of the suit property is a passage and Item No.2 is the plaintiffs' residence. It is the case of the plaintiffs that the only access to their house is through the passage and fearing obstruction at the hands of the defendants, they moved the suit for



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permanent injunction. The plaintiffs also moved an application for an interim injunction and for an appointment of an Advocate Commissioner in I.A.No.643 of 2017.

4. The said application was allowed exparte on the very date on which, the suit was moved i.e., on 21.08.2017. The Advocate Commissioner visited the suit property and submitted a report on 21.09.2017. The Advocate Commissioner was cautious enough to issue notice to the defendants as well as to the plaintiffs prior to the visit. The Court retains the power to appoint an Advocate Commissioner in cases of emergency, which has been settled by the Madras High Court in the case of ***P.Moosakutty vs. Unknown, 1953 (66) LW 418***. Therefore, I do not find anything wrong with the appointment of an Advocate Commissioner exparte.

5. However, after the visit, the defendants are aggrieved over the fact that the Advocate Commissioner has visited the property alone.



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According to them, the suit properties situated in S.Nos.247/1, 274/2 and 248/3 are the absolute properties of one Muniraj. They would claim that though the Advocate Commissioner had visited, he had not been accompanied by a qualified surveyor and therefore, they would want the warrant to be re-issued.

6. The learned counsel for the petitioners would submit that after the first visit by the Advocate Commissioner, the passage has been slightly obliterated, which has resulted in filing of a Police complaint on 22.04.2019. The Court below was convinced to re-issue the warrant to the Advocate Commissioner so as to visit the suit property along with a qualified surveyor and submit a report. The Court below had not set aside the first report filed by the Advocate Commissioner, which was already on record. I feel, no prejudice would be caused to the petitioners, if the Advocate Commissioner revisits the site along with a surveyor and submits a report.



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7. On the contrary, it will help the parties to the suits. There would be two sets of reports. First, the interim report filed by the Advocate Commissioner, which shows the existence of the pathway. Second, if there are obliterations, which have been taken place subsequently, that will also be reflected in the second report. This would only go in favour of the petitioners and therefore, no prejudice is caused to them.

8. Apart from that, when the title to the property is in dispute, if the surveyor is not appointed and this being a suit only for bare injunction and not for the one seeking declaratory relief over the property of the 2nd respondent, I feel prejudice would be caused to the respondents, in case, the warrant has not been re-issued to the Advocate Commissioner. Consequently, I do not want to find anything wrong or arbitrary in the exercise of discretion by the learned trial Judge.

9. In the result, the Civil Revision Petition is dismissed. The



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Advocate Commissioner is requested to revisit the suit property together with a qualified surveyor and submit a report, within a period of eight weeks from the date of receipt of a copy of this order, to the Court below.
No costs. Consequently, connected Miscellaneous Petition is closed.

02.08.2023

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No

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To
The District Munsif, Attur.

V.LAKSHMINARAYANAN,J.



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