



C.R.P.No.3789 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.3789 of 2023

and

C.M.P.No.23530 of 2023

Poongodi

... Petitioner

-Vs-

The Tahsildar,
O/o. The Tahsildar,
Ulundurpet Taluk,
Kallakurichi Dt.

... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 14.03.2023 made in I.A.No.2 of 2023 in O.S.No.170 of 2021 on the file of learned Addl. District Munsif, Ulundurpet.

For Petitioner	: Mr.C.Kanaiyan
For Respondent	: Mr.M.R.Gokul Krishnan, Addl. Govt. Pleader



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ORDER

Challenging the impugned order passed in I.A.No.2 of 2023 in O.S.No.170 of 2021 by the learned Addl. District Munsif, Ulundurpet, the Revision Petitioner/plaintiff preferred this Civil Revision Petition.

2. Before the trial court, the Revision Petitioner filed a suit in O.S.No. 170 of 2021 for the relief of permanent injunction against the Government Official, more particularly, the Tahsildar, Ulundurpet Taluk stating that the respondent/defendant causing interference in the enjoyment of the suit property. The respondent Tahsildar also appeared through Government Pleader and contested the case. During the pendency of the proceedings, she filed an application to appoint an advocate commissioner to measure the property with the help of Surveyor at the assistance of Tahsildar and to submit the report in order to prove that the property is not existed in the street as alleged by the defendant and also to find out the physical features of the suit property. That application was not objected by the respondent/defendant. But, the trial judge dismissed the said application stating that with respect to the classification of land and possession, the application for appointment of advocate commissioner



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cannot be considered. So also, in respect of boundaries and identification, there is no dispute, hence, there is no necessity to appoint a Commissioner. Challenging the said findings, the plaintiff preferred this Civil Revision Petition.

4. Notice served and the learned Government Pleader appeared on behalf of respondent. The learned counsel for Revision Petitioner would submit that from the year of 1978 onwards, her father enjoyed the property and thereafter, she was in possession and enjoyment of the suit property. So, she approached the authorities to grant patta in respect of Survey No.362/1, which was remained vacant and she occupied the property and put up a thatched house in 3 cents and also paying tax. Therefore, she contended that it is not a street and at the instance of local political people, the revenue authority filed a report stating that it is a 'street'. So, in order to prove the same, she filed the said application for appointment of advocate commissioner, but the same was erroneously dismissed by the trial judge. Hence, she prayed to set aside the findings of the trial judge.

5. Records perused. On perusal of records, it reveals that before the trial court, the respondent/defendant has not raised any objections. So also, as per the description of property, the plaintiff approached the court for the



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relief of injunction in respect of the property in Survey No.362/1, wherein she is having thatched house with door No.4/53. According to the plaintiff, the property is not form part of the street as claimed by the defendant. Hence, to prove the same, the report of Commissioner is necessary and it would also minimise the court work. But, the trial judge erroneously dismissed the application, as such is erroneous one and the same is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the observation made by the trial judge in I.A.No.2 of 2023 in O.S.No.170 of 2021 is set aside and the said application is ordered to be allowed. The trial judge is directed to appoint an Advocate Commissioner within a period of two weeks from the date of receipt of copy of this order and proceed with the matter as per manner known to law. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Speaking Order : Yes/No
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To

Addl. District Munsif, Ulundurpet.



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T.V.THAMILSELVI, J.

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