



CRP. No. 4347 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2023

CORAM:

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

CRP No. 4347 of 2023
& CMP No. 26414 of 2023

1.Sait Basha
2.Kaleel Ahamed Hussain

...Petitioners

Vs.

Jeevaperumal

....Respondent

PRAYER : This petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A No. 1 of 2020 in O.S No. 774 of 2019, on the file of the District Munsif-cum-Judicial Magistrate, Veppanthattai, Perambalur District dated 04.08.2023.

For Petitioner : Mr.S.Kamadevan

ORDER

This petition has been filed to set aside the fair and decreetal order dated 04.08.2023 passed in I.A No. 1 of 2020 in O.S No. 774 of 2019, on the file of the District Munsif-cum-Judicial Magistrate, Veppanthattai,



CRP. No. 4347 of 2023

Perambalur District.

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2. The petitioners herein filed I.A No. 1 of 2020 in O.S No. 774 of 2019 to appoint the advocate commissioner to note down the physical feature of the suit property. After considering the submissions on either side, the court below dismissed the said application. Challenging the same petitioners filed this petition.

3. The learned counsel for the petitioner submit that the Court below failed to appreciate the fact that suit was filed for mandatory injunction and for other consequential relief. The defendant made encroachment in the suit property and to remove the same. Hence the petitioners wants to appoint the advocate commissioner.

4. On perusal of the records, it reveals that the plaintiff filed suit for mandatory injunction and for permanent injunction in respect of suit property his one of the contention is that the suit property is encroached by the defendants. Hence the necessity arose for the petitioner to file the suit and filed the petition to appoint the advocate commissioner to note down the physical feature of the suit property and also the measure the property. Considering the fact that the claim made by the petitioner is that the defendant encroached the suit property. Hence, this Court is of the view



CRP. No. 4347 of 2023

that, the appointment of advocate commissioner is necessary to this case and his report will enable the Court to decide the suit. But the Court below failed to appreciate the above legal aspects. Hence, the order passed by the Trial Court in I.A No. 1 of 2020 in O.S No. 774 of 2019 is set aside. Further, the Trial court is directed to appoint the commissioner within a period of two weeks from the date of receipt of a copy of this order, after giving opportunities to the respondent.

5. In the result, this civil Revision petition is allowed. No cost. Consequentially, connected miscellaneous petition is closed.

24.11.2023

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To

1. The District Munsif-cum-Judicial Magistrate, Veppanthattai, Perambalur District.



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CRP. No. 4347 of 2023

T.V.THAMILSELVI,J.

Pbl

CRP No. 4347 of 2023
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