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CRP No. 4619 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.12.2023

CORAM :

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

Civil Revision Petition No.4619 of 2023
and
CMP.No.27538 of 2023

Kalpana Lakshminarayan Prakash

... Petitioner

Versus

- 1.M/s.Emerald Haven Realty Limited,
Jayalakshmi Estates, 29- Haddows Road,
Chennai-600 026.
- 2.The Member Secretary,
Chennai Metropolitan Development Authority,
No.8, Thalamuthu Natarajan Maligai,
Egmore, Chennai-600 008.
- 3.The District Collector,
Chengalpattu District.
- 4.The Assistant Engineer / PWD /WRO
Chengalpattu, Kancheepuram District.
- 5.The Commissioner,
Kattankolathur Panchayat Union,
Kattankolathur.

... Respondents

Civil Revision Petition filed Under Article 227 of Constitution of India,
praying to set aside the fair and decretal order dated 19.09.2023 passed in
I.A.No.3 of 2023 in O.S.No.193 of 2015 on the file of the Court of District
Munsif, Chengalpattu.

<https://www.mhc.tn.gov.in/judis>



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For Petitioner : Mr. T.Thiyagarajan

ORDER

The petitioner has filed this petition to set aside the fair and decretal order dated 19.09.2023 passed in I.A.No.3 of 2023 in O.S.No.193 of 2015 on the file of the Court of District Munsif, Chengalpattu.

2. Heard Mr.T.Thiyagarajan, learned counsel for the petitioner and perused the materials available on record.

3. Before the trial Court the plaintiff has filed an I.A.No.3 of 2023 in O.S.No.193 of 2015 under Order XXVI Rule 9 and Section 151 CPC to appoint Advocate Commissioner to note down the physical features of the suit mentioned property with the help of the Surveyor. On considering both side submissions, the learned trial Judge holding that to drag on the proceedings the plaintiff has come forward with the said application and the same was dismissed. Aggrieved that the revision has been preferred by the revision petitioner.



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WEB COPY 4. The learned counsel for the revision petitioner submitted that the petitioner has filed a suit for declaring easementary right over the suit property and for other consequential reliefs. He filed an application to appoint an Advocate Commissioner to note down the physical features, in order to show the easementary path way of ingress and egress in the plaintiff land, but the same was dismissed on the ground that in order to drag on the proceedings the said application was filed. In fact, the subject matter of the issue is that of easmentary right so the physical feature of the property is necessary to arrive and to decide the issue, and it is not amount to the collection of evidence, on the other hand it will minimise the burden of the Court. The learned trial Judge erroneously dismissed the application without appreciating the said legal aspects and it is liable to be set aside.

5. Accordingly, this Civil Revision Petition is allowed. The findings rendered by the learned trial Judge is set aside. The learned trial Judge is directed to appoint the Advocate Commissioner within a period of two weeks from the date of receipt of a copy of this order.



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T.V.THAMILSELVI, J.

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6. Accordingly, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

14.12.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation:Yes/No
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To

1. The District Munsif, Chengalpattu.
- 2.The Section Officer,
VR-Section, High Court of Madras.

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