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C.R.P.(MD) Nos.728 & 729 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.06.2023

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THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(MD) Nos.728 & 729 of 2021

and

C.M.P.(MD) No.3947 of 2021

1.Lakshmi

2.Kuppusamy

3.Nallammal

... Petitioners in
both C.R.Ps.

Vs.

Madhanmohan

... Respondent in
both C.R.Ps.

Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside fair and decreetal orders passed in I.A.No.1 of 2019 in D.A.No.257 of 2018 in O.S.No.54 of 2018 and in I.A.No.2 of 2019 in O.S.No.54 of 2018 both on the file of the District Munsif Court, Oddanchatram dated 19.02.2021.

For Petitioners
in both C.R.Ps.

: Mr.D.Venkatesh

For Respondent
in both C.R.Ps.

: Mr.A.N.Ramanathan



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COMMON ORDER

WEB COPY These Civil Revision Petitions have been filed to set aside fair and decretal orders both dated 19.02.2021 passed by the District Munsif Court, Oddanchatram in I.A.No.1 of 2019 in D.A.No.257 of 2018 in O.S.No.54 of 2018 and I.A.No.2 of 2019 in O.S.No.54 of 2018

2. By the order dated 19.02.2021 impugned in C.R.P.(MD) No.728 of 2021, the District Munsif Court has dismissed I.A.No.1 of 2019 in D.A.No.257 of 2018 in O.S.No.54 of 2018 filed by the petitioners for scrapping the Interim Report and the Sketch of the Advocate Commissioner appointed by the Court on 27.04.2018.

3. By the aforesaid order dated 19.02.2023 impugned in C.R.P. (MD) No.729 of 2021, the District Munsif Court has dismissed I.A.No.2 of 2019 in O.S.No.54 of 2018 filed by the petitioner for appointment of a fresh Advocate Commissioner to inspect the property and give a report with the help of Village Administrative Officer and Surveyor.

4. The petitioners are the plaintiffs in O.S.No.54 of 2018. The said suit has been filed for a bare injunction restraining the respondent from



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interfering with pathway leading to the agricultural land of the petitioners.

5. In the above suit, the petitioners had filed I.A.No.257 of 2018 for appointment of an Advocate Commissioner under Order 26 Rule 9 of the Code of Civil Procedure, 1908. The Advocate Commissioner appears to have visited the property of the petitioners and that of the respondent on 05.06.2018 and has given an Interim Report dated 13.12.2018. The petitioners have filed their objections to the Interim Report dated 13.12.2018 of the Advocate Commissioner on 21.12.2018.

6. The learned counsel for the petitioners submits that the Advocate Commissioner appointed by the Court on 27.04.2018 in I.A.No.257 of 2018 has colluded with the respondent as much as the Advocate Commissioner visited the property without presence of the Village Administrative Officer and Surveyor. He further submits that in the Interim Report dated 13.12.2018, the Advocate Commissioner has also stated that he had taken photograph of the property, however, same has been scored off later and thus, the Advocate Commissioner has suppressed the ground reality.



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WEB COPY 7. It is further submitted that under these circumstances, the petitioner filed I.A.No.1 of 2019 in I.A.No.257 of 2018 in O.S.No.54 of 2018 to scrap the Interim Report of the Advocate Commissioner dated 13.12.2018 and I.A.No.2 of 2019 in O.S.No.54 of 2018 for appointment of a senior Advocate Commissioner to give a fresh report. It is further submitted that the impugned orders are liable to be dismissed and I.A.No. 1 of 2019 in I.A.No.257 of 2018 in O.S.No.54 of 2018 and I.A.No.2 of 2019 in O.S.No.54 of 2018 deserve to be allowed.

8. Defending the impugned orders, the learned counsel for the respondent submits that the impugned orders are well reasoned and require no interference. It is submitted that I.A.No.1 of 2019 in I.A.No. 257 of 2018 in O.S.No.54 of 2018 and I.A.No.2 of 2019 in O.S.No.54 of 2018 are premature. It is submitted that it is always open for the petitioners to subject the Advocate Commissioner appointed by the Court pursuant to the order in I.A.No.257 of 2018 on 27.04.2018 to cross-examination. It is further submitted that without even subjecting the Advocate Commissioner to cross-examination, the petitioner has proceeded to file I.A.No.1 of 2019 in I.A.No.257 of 2018 in O.S.No.54 of



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2018 and I.A.No.2 of 2019 in O.S.No.54 of 2018 and therefore, the present Civil Revision Petitions be dismissed.

9. I have considered the arguments advanced by the learned counsel for the petitioners and the learned counsel for the respondent.

10. The suit has been filed by the petitioners for a bare injunction. Ordinarily, in a suit for bare injunction, the Courts are not inclined to appoint the Advocate Commissioner as it would amount to collecting of evidences.

11. However, the admitted position in this case is that the respondent appears to have purchased the property prior to the institution of the suit and appears to have infringed the rights of the petitioner by blocking the pathway as per the petitioners.

12. Whether the statements of the learned counsel for the petitioners are true or not can be only ascertained if a fresh proper Report is given by the Advocate Commissioner with the help of the Village Administrative Officer and Surveyor along with the necessary photographs.



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WEB COPY 13. The Interim Report dated 13.12.2018 of the Advocate Commissioner indicates that the land in question was inspected by him and identified by him without help of the Village Administrative Officer and Surveyor. The photographs also appear to have been taken which is evident from a reading of the Paragraph No.1 of the Interim Report of the Advocate Commissioner dated 13.12.2018, which has been scored off.

14. Although the petitioners have a right to subject the Advocate Commissioner to cross-examination, due to efflux of time for trial, there is a possibility for the physical feature of the land getting altered. Considering the fact that the land in question is a agricultural land, I am inclined to allow these Civil Revision Petitions by allowing both I.A.No.1 of 2019 in I.A.No.257 of 2018 in O.S.No.54 of 2018 and I.A.No.2 of 2019 in O.S.No.54 of 2018.

15. In the light of the above, the interim Report of the Advocate Commissioner dated 13.12.2018 shall stand scrapped. A new Advocate Commissioner shall be appointed to give a report.



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16. The District Munsif Court, Oddanchatram shall appoint a senior Advocate having well experienced and good reputation as an Advocate Commissioner, to visit the property in question in the presence of the parties and their counsel if necessary, and inspect the property with the help of Village Administrative Officer or Surveyor or both.

17. The Advocate Commissioner shall be appointed within a period of two weeks from the date of receipt of a copy of this order. The Advocate Commissioner can be called upon to file a detailed Report within a period of four weeks from the date of appointment. The Advocate Commissioner shall also be directed to take photographs of the property.

18. The District Munsif Court, Oddanchatram shall proceed with the trial and dispose of the suit, as expeditiously as possible, within a period of 9 months from the date of receipt of a copy of this order. The District Munsif Court, Oddanchatram is directed to decide the *interse* dispute between the parties in the suit without getting influenced by any observations contained in this order touching on the merits of the dispute.



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C.SARAVANAN, J.

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19. Accordingly, these Civil Revision Petitions are allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

13.06.2023

NCC : Yes / No
Internet: Yes/No
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To

District Munsif Court,
Oddanchatram.

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