



C.R.P.(MD)No.1005 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD)No.1005 of 2019

1.R.Packiaraj

2.Sankar

... Petitioners

Vs.

1.Subburaj

2.Velusamy alias Velu

... Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 28.02.2019 passed in I.A.No.765 of 2018 in O.S.No.27/2018 by the learned Principal District Munsif Court, Sankarankovil and allow this civil revision petition.

For Petitioners : Mr.V.Muthuvelan

For Respondents : Mr.R.J.Kartick



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ORDER

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The present civil revision petition has been filed by the plaintiff in the suit for permanent injunction challenging the order of dismissal of application for appointment of an Advocate Commissioner.

2.The application for appointment of the Advocate Commissioner was dismissed by the trial Court on the ground that the suit is for permanent injunction with regard to a path way. However, the learned counsel appearing for the petitioners brought to the notice of this Court that the plaint prayer has been amended by incorporating the prayer for mandatory injunction for removal of obstruction made by the defendants in the suit path way. When there is an allegation that the defendants have encroached upon the suit path way and had made obstruction and there is a prayer for mandatory injunction, necessarily Advocate Commissioner has to be appointed. However, the learned counsel appearing for the respondents/defendants had strongly objected to the consideration of the commissioner application.



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3.The entire order of the trial Court proceeds on the basis that the suit is for bare injunction, without considering the amended prayer. Therefore, the order is erroneous and the same is set aside. The application in I.A.No. 765 of 2018 in O.S.No.27 of 2018 stands allowed. The trial Court shall appoint an Advocate Commissioner to note down obstruction, if any in the suit path way, with a direction to the Commissioner to file a report within thirty (30) days and thereafter, proceed with the suit in accordance with law. Accordingly, this civil revision petition is allowed. No costs.

22.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
gns

To

The Principal District Munsif Court,
Sankarankovil.



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R.VIJAYAKUMAR, J.

gns

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