



C.R.P(MD)Nos.1046 and 1047 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.08.2023

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THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)Nos.1046 and 1047 of 2019

and

C.M.P(MD)No.5733 of 2019

C.R.P(MD)No.1046 of 2019

1.P.Senthilvel

2.P.Kalidasan

...Petitioners/Petitioners/
Plaintiffs

Vs.

B.Kasirajan

...Respondent/Respondent/
Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 18.02.2019 in I.A.No.2197 of 2018 in O.S.No.191 of 2014 on the file of the District Munsif Court, Melur.

For Petitioners : Mr.R.Maheswaran

For Respondent : Mr.A.Jayaramachandran

C.R.P(MD)No.1047 of 2019

1.P.Senthilvel

2.P.Kalidasan

...Petitioners/Petitioners/
Plaintiffs



C.R.P(MD)Nos.1046 and 1047 of 2019

Vs.

B.Kasirajan

...Respondent/Respondent/
Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 18.02.2019 in I.A.No.2198 of 2018 in O.S.No.191 of 2014 on the file of the District Munsif Court, Melur.

For Petitioners : Mr.R.Maheswaran

For Respondent : Mr.A.Jayaramachandran

COMMON ORDER

CRP(MD)No.1046 of 2019 has arisen out of an application filed under Section 151 of C.P.C to reopen the petitioners side evidence so as to file the Commission application.

2. CRP(MD)No.1047 of 2019 has arisen out of the dismissal of the Commission application.

3. The learned counsel for the petitioners vehemently submits that the respondent has encroached upon the petitioners' property. He would further submit that as a result of which, the landlord do not have any access to reach the property. Therefore, the appointment of



Commissioner is very much essential to prove the said fact, and that so as to file an application for appointment of Commission application, the suit has to be reopened.

4. The learned counsel for the respondent vehemently contend that the suit is now posted for arguments, and that alleged encroachment is an imaginary one. Apart from that, the learned counsel for the respondent further would submit that, when the petitioners' prayer is only for the relief of permanent injunction, and that when there is no dispute in respect of the identity of the property, the very appointment of Commissioner in respect of the encroachment that too for removal of encroachment is irrelevant and illogical. Hence, he contend that there is no merit in the civil revision petition and prayed to dismiss the application.

5. I have given my anxious consideration to either side submissions.

6. As rightly submitted by the learned counsel for the respondent there is no prayer for mandatory injunction, and it is manifestly clear that even in the pleadings, there is no reference about the alleged



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encroachment. Apart from that, it is an admitted fact that now the suit is posted for arguments. Therefore, when there is no amendment of pleading towards encroachment and that when there is no prayer for a mandatory injunction, as rightly observed by the Court below, the appointment of Commissioner is not justifiable. Therefore, this Court is of the view that the finding of the Court below does not require any interference.

7. It is submitted that the suit is posted for arguments, therefore, the Trial Court is directed to dispose of the suit as expeditiously as possible preferably within a period of two months from the date of receipt of the copy of this order.

8. In the result, both the civil revision petitions stands **dismissed**.
No costs. Consequently, connected miscellaneous petition is closed.

11.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

WEB COPY

- 1.The District Munsif Court,
Melur.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

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