



C.R.P(PD)(MD).No. 639 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.08.2023

CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P(PD)(MD).No. 639 of 2019
and CMP(MD)No.3262 of 2019

C.Ramalingam

... Petitioner

Vs

1. B.Mahalakshmi
2. S.Vijayarani
3. G.Dhanapackiam
4. P.Ganesan
5. C.Asaithambi
6. C.Elango
7. S.Ramanathan
8. M.Vijaya
9. P.Thangapandi
10. R.Ramya

....Respondents



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PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the Fair and Decreetal order, dated 19.11.2018 in I.A. No. 827 of 2018 in O.S. No. 914 of 2013 on the file of the learned Sub Judge (II Additional), Madurai by allowing this Civil Revision Petition.

For Petitioner : Ms.Jessi Jeeva Priya

For Respondents : Mr.A.John Vincent (R1 to R4)

R5 to R10 – Given up

ORDER

To set aside the fair and decreetal order, dated dated 19.11.2018 in I.A. No. 827 of 2018 in O.S. No. 914 of 2013 on the file of the learned Sub Judge (II Additional), Madurai, the revision petitioner has filed this Civil Revision Petition.

2.The petitioner is the petitioner/plaintiff and the respondents are the respondents/defendants before the Court below. For the sake of convenience, the parties are referred to as per the litigative status in the suit.



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3.The brief facts, which give rise for filing the instant civil revision petition are as follows:

(i)The petitioner/plaintiff has filed a suit for the relief of declaration and mandatory injunction. According to the petitioner, the defendants have encroached upon the common passage measuring about 20 feet. Whereas, the defendants have stated in their written statement that there is no common passage, since the so called common passage is their property and they had put up construction. Therefore, the petitioner has filed an application for appointment of Advocate Commissioner on the ground that in order to get effective decree of mandatory injunction, it is necessary and appropriate to find out the exact extend of encroachment.

(ii)However, that application was resisted by the respondents on the ground that the petitioner has filed the petition only with an intention to collect evidence and in this regard, they have also relied upon the Judgment of this Court in ***V.Ramalingam Vs Ponnaiyan @ Ponnusamy*** reported in ***2019(2) LW 40***.

(iii)After considering both side submissions, the trial Judge came to a conclusion that unless the Commissioner is appointed, the



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encroachment could not be effectively identified and thereby, allowed the application.

(iv) Aggrieved with the said order, the present revision petition has been filed by the respondents/defendants before this Court.

4. I have given my anxious consideration to either side submission.

5. The learned counsel for the petitioner would vehemently submit that the very purpose of seeking appointment of Advocate Commissioner is to collect evidence and such a conduct could not be permitted, in view of decision in *V.Ramalingam Vs Ponnaiyan @ Ponnusamy* cited *supra*.

6. This Court has perused the documents submitted by the petitioner/plaintiff. In order to prove the case, the plaintiff has relied upon as many as 50 documents which are all mentioned in the plaint itself. However, in addition to the above documents, the petitioner wanted to elucidate before the Court below, with regard to the encroachment made in



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20 feet passage, by way of appointment of Commissioner. The trial Judge has correctly considered the submission of the petitioner and has found that only by appointing Commissioner, the so called encroachment could be easily identified. Therefore, as rightly observed by the trial Judge very appointment of Advocate Commissioner would definitely reduce the oral evidence.

7.Thus, this Court is of the view that the order passed by the Court below is perfectly in order and does not want to interfere with the order.

8.Accordingly, this **Civil Revision Petition stands dismissed.** There is no order as to costs. Consequently, connected miscellaneous petition is closed.

07.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PNM



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To

- 1.The Sub Judge (II Additional), Madurai
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN, J.,

PNM

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