



CRP(MD).No.1555 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

CRP(MD).No.1555 of 2022

and

C.M.P(MD).No.6683 of 2022

1.Chellammal

2.P.S.Karuppana Gounder

3.Manimaran

.. Petitioners/Petitioners/Appellants

Vs.

Vellaiammal (Late)

1.Karuppana Gounder

2.Karuppasamy

3.Naachi Pantidhan

4.Nallsamy

5.Karthigai Vel

6.Mayilaththal

7.Koundappan

8.Pappayee @ Kumarayee

9.Veerappa Gounder

10.Palanisamy

11.Kumarayammal

12.Palaniammal

W/o.Karuppusamy

13.Palaniammal

W/o.Sadayappa Gounder

14.Valliammal

... Respondents/Respondents/Respondents

PRAYER : Revision Petition filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and decretal order dated 09.06.2022 in I.A.No.34 of 2022 in A.S.No.22 of 2022 on the file of the Subordinate Court, Oddanchathiram.



WEB COPY



CRP(MD).No.1555 of 2022

For Petitioners : Mr.H.Lakshmi Shankar
For Respondents : Mr.V.Meenakshisundaram
for Mr.I.Velpradeep (for R1 to R4)

ORDER

The present revision petition has been filed by the appellants/defendants in the first appeal in A.S.No.22 of 2022 challenging an order in I.A.No.34 of 2022 in A.S.No.22 of 2022 dismissing an application filed under Order 26 Rule 9 of the Code of Civil Procedure.

2. The plaintiffs have filed a suit in O.S.No.198 of 2012 for bare injunction contending that in the 50 cents of land there are 12 plots and in between these 12 plots there is a 10ft., width pathway and all the houses are having electricity service connection. However, the defendants has filed a written statement contending that there are no houses in the suit schedule property and the electricity service connection and the pathway are all imaginary. The trial Court in para No.5.10 of the judgment has categorically found that the plaintiffs have not established the existence of buildings in the suit schedule property, however, has proceeded to grant decree for permanent injunction in favour of the plaintiffs based upon the electricity receipts and house tax receipts.



CRP(MD).No.1555 of 2022

3. Challenging the said decree, the defendants have filed A.S.No.22 of 2022 (renumbered S.No.64 of 2019) on the file of the Subordinate Court, Palani. Pending first appeal, the defendants/appellants had filed I.A.No.34 of 2022 for appointment of Advocate Commissioner to note down the physical features and to file a report along with plan. The said application was dismissed. Challenging the same, the present revision petition has been filed.

4. According to the learned counsel appearing for the revision petitioners, appointment of Advocate Commissioner is necessary to disprove the case of the plaintiffs that there are no houses in the schedule of property. He further contended that only through an Advocate Commissioner's report the absence of electric poles and the pathway could be proved.

5. Per contra, the learned counsel appearing for the respondents/plaintiffs had contended that even as per the plaint averments, the buildings have got dilapidated and the plaintiffs are attempting to put up a new construction. However, he asserts that the electric poles, service connection and panchayat road are still available in the suit schedule property.



CRP(MD).No.1555 of 2022

6. I carefully considered the submissions made on either side.

7. The plaintiffs have contended that there are remnants of the demolished building, electric poles, service connection and panchayat pathway in the suit schedule property. However, the defendants have contended that it is a vacant land and there are no electrical poles or service connection or a panchayat road. These physical features of the suit schedule property cannot be brought to the notice of the Court by way of an oral evidence and documentary evidence. Therefore, I find that an appointment of Advocate Commissioner is necessary to note down the physical features of the suit schedule property. The order passed by the trial Court in I.A.No.34 of 2022 in A.S.No.22 of 2022 is set aside and the same is allowed. The learned Subordinate Judge, Oddanchathiram, is directed to appoint an Advocate Commissioner to note down the physical features of the suit schedule property and the report shall be filed within a period of 30 days from the date of appointment.



CRP(MD).No.1555 of 2022

8. The learned counsel appearing for the revision petitioners/defendants hereby undertakes that they would withdraw the application filed under Order 41 Rule 27 of the Code of Civil Procedure. On filing of the said report, after giving opportunity to the respondents/plaintiffs in the appeal for filing their objections, appeal in A.S.No.22 of 2022 shall be disposed of on or before **31.08.2023**.

9. With the aforesaid observation, the Civil Revision Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

20.02.2023

Index : Yes / No

Internet : Yes / No

Rmk

To
The Subordinate Judge, Oddanchathiram.



WEB COPY



CRP(MD).No.1555 of 2022

R.VIJAYAKUMAR ,J.,

Rmk

Order made in
CRP(MD).No.1555 of 2022

Dated:
20.02.2023