



C.R.P.(MD) No.1667 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.07.2023

CORAM:

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

C.R.P.(MD) No.1667 of 2022

and

C.M.P(MD) No.7327 of 2022

1.Snehapoo

2.Lazer

3.T.Justin Raj

4.T.Sunder Singh

5.T.Ashok Darwin

... Petitioners

Vs.

1.John Peter

2.John Bosco

... Respondents

Prayer :- Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order in I.A.No.3 of 2021 in O.S.No.90 of 2021 passed by Additional District Munsif Court, Padmanabhapuram, dated 20.06.2022.



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For Petitioners : Mr.A.Balakrishnan

For Respondents : Mr.B.Sargunam

ORDER

This civil revision petition is filed against the fair and decretal order in I.A.No.3 of 2021 in O.S.No.90 of 2021 on the file of the Additional District Munsif Court, Padmanabhapuram, dated 20.06.2022.

2. The petitioners as plaintiffs filed a suit in O.S.No.90 of 2021 for the relief of easement right of pathway over the plaint 'B' schedule property by necessity and prescription and also for permanent injunction. During the pendency of the above suit, the petitioners moved an application in I.A.No.3 of 2021 under Order 26 Rule 9 of CPC for appointment of an Advocate Commissioner to inspect the suit property and note down the physical features in suit 'A' and 'B' schedule properties. The Court below dismissed the said application by stating that Advocate Commissioner cannot be appointed for collection of evidence and therefore, there is no necessity to appoint an Advocate Commissioner in this matter. Aggrieved by this, the petitioners have preferred the present revision.



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3. The learned counsel appearing for the petitioners would submit that the suit is for easementary right based on necessity and prescription. The dispute is with regard to the existence of pathway. So it has become necessary to appoint an Advocate Commissioner to note down the existence of pathway and other physical features in the suit property. He would further submit that since there was a specific statement made on the side of the defendants that there is an alternative pathway in the suit property, the same has also to be noted by the Advocate Commissioner to have the fair adjudication. Hence, he prays to allow this petition.

4. On the other hand, the learned counsel appearing for the respondents would vehemently contend that an Advocate Commissioner cannot be appointed for the above purpose and apart from that, the petitioners are continuously harassing the respondents one way or other. Therefore, appointment of Advocate Commissioner is not necessary for this matter and the impugned order passed by the Court below calls for no interference.



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5. Heard on both sides and records perused.

6. The appointment of Advocate Commissioner is sought only to note down the physical features in the suit property and also to note down the existence of pathway. Apart from that, since the respondents in their written statement have stated that there is an alternative pathway in the suit property for the plaintiffs to enter into their property, it has become necessary to note down whether such alternative pathway is available for the petitioners/plaintiffs to enter into their property. The trial Court ought to have considered on these facts by allowing the petition for appointment of Advocate Commissioner, in order to elucidate certain issue, which would minimise the production of oral and documentary evidence. Even otherwise, the respondents are at liberty to raise all his objections to the report filed by the Advocate Commissioner. Therefore, the order passed by the learned Additional District Munsif, Padmanabhapuram, in I.A.No.3 of 2021 is set aside and the said petition is allowed. The learned Additional District Munsif, Padmanabhapuram is directed to appoint an Advocate Commissioner for the purpose stated



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in the petition. The parties are directed to co-operate with the Advocate Commissioner to inspect the suit property and to file his report.

7. With the above directions, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

14.07.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes

cp

Note: Issue order copy on 17.07.2023

To

The Additional District Munsif,
Padmanabhapuram.



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K.GOVINDARAJAN THILAKAVADI, J.

cp

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