



C.R.P(PD)(MD)No.935 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **05.07.2023**

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(PD)(MD)No.935 of 2018

and

C.M.P(MD)No.4126 of 2018

Poomayil

...Petitioners/Petitioner/
Plaintiff

Vs.

1.Rakkan

2.Arjunan

...Respondents/Respondents/
Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to fair and decreetal order dated 20.12.2017 made in I.A.No.782 of 2017 in O.S.No.50 of 2017 on the file of the learned District Munsif Court, Devakottai and set aside the same.

For Petitioner : Mr.J.Anandkumar

For R1 : No Appearance

For R2 : Mr.P.Balasubramanian



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ORDER

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This civil revision petition has been filed against the fair and decreetal order dated 20.12.2017 in I.A.No.782 of 2017 in O.S.No.50 of 2017 on the file of the District Munsif Court, Devakottai.

2. The petitioner has filed a suit for permanent injunction, in which she filed an application in I.A.No.782 of 2017 under Order 26 Rule 9 and Section 151 of C.P.C. for the appointment of an Advocate Commissioner on the ground that the respondents/defendants were attempting to fence the suit property by stone pillars. They also further stated that the stone pillars and other fencing materials are kept ready nearby the suit property. Therefore, the petitioner filed an application to note down the physical features of the suit property. Admittedly, the respondents were set *ex parte* in the commission application before the Trial Court. In spite of that, the Trial Court has dismissed the application on the ground that even if the Advocate Commissioner was appointed it would in no way be helpful to the Court, and thereby dismissed the commission application on the premise that the petitioner has filed the application to appoint Advocate Commissioner only to prove the possession.



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3. The learned counsel for the respondent fairly concedes that the respondents did not appear before the Trial Court.

4. On perusal of the affidavit filed before the Trial Court, which is annexed along with the type set, would very much evident that the petitioner had filed the application only to note down the physical features of the suit property and not to prove the possession through the appointment of the Advocate Commissioner. The very intention of the petitioner could be seen from the pleading, that when the respondents were attempting to put up a stone fence around the suit property and the fencing materials are stored, in such circumstances, only to note down the existing physical features of the suit property, the petitioner filed the commission application.

5. In such peculiar circumstances and also having considered the non-appearance of the respondents before the Trial Court, this Court is of the firm view that the dismissal order passed by the learned Trial Judge in I.A.No.782 of 2017 in O.S.No.50 of 2017 is liable to be interfered with, by allowing the commission application.



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6. As a result of which, this civil revision petition stands allowed, thereby I.A.No.782 of 2017 is ordered to be restored on file and the learned trial Judge is directed to pass an order appointing an Advocate Commissioner to note down the physical features of the suit property and to file a report. Consequently, the connected miscellaneous petition is closed. No costs.

05.07.2023

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

1.The District Munsif Court,
Devakottai.

2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

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