



C.R.P.(MD).No.2400 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.2400 of 2018

and

C.M.P(MD) No.10731 of 2018

1. Arumugam
2. Murugesan
3. Saravanan

... Petitioners/Petitioners/Plaintiffs

-vs-

1. Kasinathan
2. Govindaraj
3. Sekar

4. The Revenue Tahsildar,
Office of the Revenue Tahsildar,
Mannachanallur Taluk,
Trichy District.

5. The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Paramasivapuram,
Lalgudi Taluk,
Trichy District.

6. State of Tamil Nadu,
Represented by its District Collector,
Collectorate Office,
Trichy District.

... Respondents/Respondents/Defendants



C.R.P.(MD).No.2400 of 2018

WEB COPY

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 02.03.2018 passed by the learned District Munsif, Lalgudi, in I.A.No.505 of 2015 in O.S.No.397 of 2015.

For Petitioners : Mrs.V.Sujatha Siddharthan

For Respondents : Mr.S.Karthick – for R1 to R3

: Mr.M.Senthil Ayyanar
Government Advocate – for R4 to R6

ORDER

The present Civil Revision Petition has been filed by the petitioners under Article 227 of the Constitution of India, against the fair and decreetal order dated 02.03.2018 passed by the learned District Munsif, Lalgudi, in I.A.No.505 of 2015 in O.S.No.397 of 2015.

2. The petitioners herein are the plaintiffs and the respondents herein are the defendants before the Court below.

3. For the sake of convenience, the parties will be referred to as per the litigative status before the trial Court.



C.R.P.(MD).No.2400 of 2018

WEB COPY

4. The learned counsel for the petitioners would submit that the plaintiffs have filed the suit in O.S.No.397 of 2015 for the relief of permanent injunction, as well as to measure and fix the boundary line to the suit property. He would further submit that, since the respondents made an encroachment, to find out the measurement of the encroachment, appointment of Advocate Commissioner is necessary.

5. However, the said contention is stoutly objected by the learned counsel appearing for the respondents. Even on perusal of findings of the trial Court, it is seen that the Court below has rejected the application with a finding that the Advocate Commissioner cannot be appointed to prove the possession.

6. The main contention of the learned counsel for the petitioners is that, the encroachment would be measured only by way of appointment of Advocate Commissioner, and if the Advocate Commissioner is appointed, then encroachment can be proved before the Court of law.



C.R.P.(MD).No.2400 of 2018

WEB COPY

7. At this juncture, this Court has perused the plaint. Whereas, the plaint does not disclose any of the encroachments and wanted only the relief of permanent injunction. It is pertinent to mention here that, the Commission application has been filed along with the suit itself on the very day of filing of suit. Apart from that, even in the suit, the petitioners prayed for the relief of measurement of the suit property and to put up boundary stone.

8. In such circumstances, when no encroachment is pleaded in the plaint itself, appointment of Advocate Commissioner to measure the encroachment does not arise. Therefore, this Court has no reason to interfere with the finding of the Court below.

9. In the result, this Civil Revision Petition is **dismissed**. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

24.08.2023

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

1. The District Munsif,
Lalgudi.

2. The Revenue Tahsildar,
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Trichy District.

3. The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Paramasivapuram,
Lalgudi Taluk,
Trichy District.

4. The District Collector,
Collectorate Office,
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C.KUMARAPPAN,J.

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