



CRP(MD) No.1885 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **P.B.BALAJI**

CRP(MD) No.1885 of 2019
and C.M.P(MD)No.9638 of 2019

Periyasamy
Vs. ...Petitioner / 3rd Respondent / Defendant

1.Sakthivel ..1st respondent/petitioner/plaintiff

2.Ganesan

3.Balasubramanian ...2nd & 3rd Respondents / 1st & 2nd Respondents
/ 1st & 2nd Defendants

PRAYER : This Civil Revision Petition is filed under Article 227 of Constitution of India to call for the records and set aside the fair and decreetal order dated 14.03.2019 in I.A. No.1149/2018 in O.S. No.47 of 2016 on the file of District Munsif Court, Thuraiyur.

For Petitioner :Mr.H.Lakshmi Shankar

For R1 :Mr.M.Rajaguru

For R2 & R3 :No appearance

ORDER

The present revision is at the instance of the 3rd defendant in O.S.No.47 of 2016 on the file of District Munsif Court, Thuraiyur. Aggrieved by the order in



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I.A. No.1149 of 2018 in the said suit seeking appointment of an Advocate Commissioner to inspect the suit property and file a report, the present revision has been filed mainly on the ground that the suit has been filed only with regard to the entitlement of the plaintiff to any right over the existence of pathway and the existence of pathway is not in dispute and therefore, absolutely there is no necessity for appointing an Advocate Commissioner to ascertain the physical features of the pathway and it would be a futile exercise in appointing an Advocate Commissioner and gather particulars about the physical features of the said pathway.

2. I have heard Mr.Lakshmi Shankar, learned counsel for the petitioner and Mr.M.Rajaguru, learned counsel appearing for Mr.P.Santhana Krishnan, learned counsel for the first respondent. I have also perused the order of the trial court.

3. The trial court has allowed the application for appointment of an Advocate Commissioner. Unfortunately, the trial court has misunderstood the contentions of the respective parties before the court and on a misconception, the trial court has proceeded to appoint an Advocate Commissioner. On a reading of



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the plaintiff, it is clear that it is only right of the plaintiff in the pathway that requires adjudication. The existence of the pathway is not in dispute and therefore, no useful purpose would be achieved by appointing an Advocate Commissioner considering the nature of such a suit. The trial court has erred in appointing an Advocate Commissioner for ascertaining the physical features which was totally unnecessary in the facts and circumstances of the present case. Therefore, the impugned order dated 14.03.2019 in I.A.No.1149 of 2018 in O.S. No.47 of 2016 on the file of District Munsif Court, Thuraiyur. warrants interference. Accordingly, the impugned order is set aside.

4. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No
CM

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P.B.BALAJI. J.

CM

To

1.The District Munsif Court,
Thuraiyur.

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

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