



C.R.P.(MD)No.1704 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 07.07.2023

Delivered on : 01.08.2023

CORAM:

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

C.R.P.(MD)No.1704 of 2018

and

C.M.P.(MD)No.7353 of 2018

1.K.Lakshmi

2.M.Devaki

3.Thangarasu

4.Ponnaiya

5.Selvam

6.Uma Angayarkanni

7.R.Meenambal

... Petitioners / Petitioners / Plaintiffs

Vs.

Mathavan

... Respondent/ Respondent / Defendant

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order, dated 14.03.2018, made in I.A.No.65 of 2018, in O.S.No.19 of 2011, on the file of the District Munsif cum Judicial Magistrate, Thirupathur.



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For Petitioners : Mr.S.Rajasekar

For Respondent : No appearance

ORDER

The instant Civil Revision Petition has been filed against the order, dated 14.03.2018, made in I.A.No.65 of 2018, in O.S.No.19 of 2011, on the file of the District Munsif cum Judicial Magistrate, Thirupathur.

2. The revision petitioners herein are the plaintiffs, and the respondent herein is the defendant before the trial Court. The revision petitioners filed the instant Civil Revision Petition against the order of dismissal passed by the learned District Munsif cum Judicial Magistrate, Thirupathur, in an application for appointment of Commissioner.

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

4. The short facts, which give rise to the instant Revision Petition, are as under:

4.1. The petitioners have filed a suit for mandatory injunction to



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remove the encroachment. The defendant disputed the said encroachment.

Hence, to prove the encroachment of construction put up by the respondent, the petitioners / plaintiffs prayed for an appointment of Advocate Commissioner along with Surveyor.

4.2. The respondent / defendant stoutly objected the application, and would submit that when the plaintiffs themselves have admitted that a fencing was put up by them between the plaintiffs' and the defendant's property, there could not be any encroachment. Further, the respondent would also object the application on the ground that there was an enormous delay in filing the Commission application and that too, when the suit was posted for arguments.

5. The learned trial Judge after considering the submission made by either side, has dismissed the application on the ground that the evidence on either side is over, and that the very filing of this application at the fag end of the case, that too after seven years from the date of filing of the suit, is nothing but to protract the trial proceedings, and hence, ultimately dismissed the application.



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6. Aggrieved with the order of the learned trial Judge, the petitioners have come up with the instant Civil Revision Petition.

7. Despite the name of the respondent being printed in the cause list, there is no representation on behalf of the respondent.

8. I have given my anxious consideration to the submission made by the learned counsel for the petitioners and perused the materials available on record.

9. The crest and trough of the order of the learned trial Judge would manifest two reasons for dismissal of this application. The first reason is that this application has been filed, when the suit is posted for arguments, that too after the lapse of seven years. The second reason is that the very Commission application was filed to collect the evidence.

10. As rightly submitted by the learned counsel for the respondent, having contested the case hotly and participated in the proceeding with out any demur, till the matter reaches to the stage of



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argument, all of sudden filing an application at the fag end of the trial, would only probablise the non requirement of appointment of any Advocate Commissioner. The peculiar facts of the case in hand is that, the suit was filed during the year 2011 with the prayer for the removal of encroachment, when such encroachment is disputed, then the natural propensity to every litigant would be to seek assistance of Commissioner to elicit the encroachment before the Court. But, here, for a period of seven years, no application was filed. The very conduct in filing the Commission application, when the matter is posted for arguments, would explicitly probablise the attempt of the petitioners to collect some evidence, in support of his case. No doubt, in the affidavit, it has been stated only to note down the physical feature. But, the petitioners' conduct would only manifest that under the disguise of noting down physical features, are attempting to collect evidence.

11. At this juncture, it is useful to refer the judgment of this Court, reported in **2008-3-CTC-597 (K.M.A.Wahab V. Eswaran)**. Wherein, this Court has held that the appointment of Advocate Commissioner can't be ordered, to prove the possession and to collect the evidence.



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12. Therefore, this Court finds every justification for confirming the dismissal of the Commission application which ordered by the learned trial Judge. Thus, there is no scope for interference with the orders of the learned trial Judge. Hence, the instant Civil Revision Petition is **dismissed**. There shall be no order as to costs.

13. From the perusal of the records, the suit is of the year 2011 and at the arguments stage. Therefore, the learned trial Judge is directed to dispose of the suit within a period of three months from the date of receipt of the copy of this order. Consequently, connected Miscellaneous Petition is closed.

01.08.2023

NCC : Yes/No
Index : Yes/No
Ls



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To

1.The District Munsif cum Judicial Magistrate,
Thirupathur.

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



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C.KUMARAPPAN.,J.

Ls

Pre-delivery Order made in
C.R.P(MD)No.1704 of 2018

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