



C.R.P.(MD).No.2662 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.2662 of 2018

and

C.M.P(MD)No.11677 of 2018

Jeyakumar

... Revision Petitioner/Petitioner/
Defendant

-vs-

1.Kathiresan
2.Palani
3.Manickam Aasari
4.Mahalingam
5.Kumar

... Revision Respondents/Respondents/
Plaintiffs

PRAYER: Civil Revision Petition is filed under Article 227 of Civil Procedure Code, to set aside the Fair and Executable Order passed in I.A.No. 223/2018 dated 19.08.2018 in the court of the District Munsif Court, Ramanathapuram.

For Petitioner : Mr.S.A.Ajmal Khan

For Respondents : No appearance



C.R.P.(MD).No.2662 of 2018

WEB COPY

ORDER

The present Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India, against the Fair and Executable Order passed in I.A.No.223/2018 dated 19.08.2018 in the court of the District Munsif Court, Ramanathapuram.

2. The petitioners are the defendants before the suit, the respondents herein are the plaintiffs before the suit.

3. It appears that the respondents herein have filed a suit for injunction in respect of passage and for declaration that the said passage is a common passage. It also appears from the records that this petitioner has also filed a separate suit in O.S.No.132 of 2014 in respect of the very same suit property for the relief of declaration that the suit property is his exclusive property. While so, the petitioner/defendant appears to have filed an application in I.A.No.223 of 2018 in O.S.No.114 of 2014 for appointment of an advocate commissioner so as to prove the existence of other three passage available for the respondents herein. The said application was resisted by the respondents/plaintiffs by contending that the very commission application has



C.R.P.(MD).No.2662 of 2018

been filed for collecting evidence. Considering the submission made on either side, the court below has dismissed the application.

4. Aggrieved with the said order, the petitioner/defendant is before this Court.

5. The learned counsel for the petitioner would vehemently submits that the respondents herein while filing the plaint did not mention about the S.F., number and also further submits that if the commissioner is not appointed they will be put to irreparable loss. He would further submits that unless the commissioner being appointed, the existence of other three passage through which the respondent are approaching their property could not be proved.

6. Despite the name printed, no one appeared on behalf of the respondents.

7. This Court has given its anxious consideration to the submissions of the learned counsel for the petitioner.



C.R.P.(MD).No.2662 of 2018

WEB COPY

8. While considering the submission of the learned counsel for the petitioner, the very application was initiated only to prove the existence of the other three passage through which the respondents can have the access to their property. It is pertinent to make a mention that the respondents filed a suit for declaration only to declare that the suit passage is a common passage. In the plaint averments, this Court could not see anything for seeking a declaration on the ground of easement by necessity. When they have not claimed the relief of such declaration, then the proof of existence of alternative passage is immaterial.

9. It is also pertinent to note that the very application for appointment of an advocate commissioner has been filed only at the stage when the suit was posted for defence side evidence. Therefore, having slept over the matter for almost 4 years, moving a commission application at the belated stage cannot be accepted at all. On seeing the finding of the court below, the court below has rightly dismissed the application on the ground of delay. In view of the above detailed discussion, this Court could not find any ground to interfere with the order of the court below.



C.R.P.(MD).No.2662 of 2018

WEB COPY

10. In the result, this civil revision petition is **dismissed**. No costs.

Consequently, connected miscellaneous petitions are closed.

22.08.2023

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

The District Munsif Court,
Ramanathapuram.



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C.R.P.(MD).No.2662 of 2018

C.KUMARAPPAN,J.

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