



C.R.P.(MD).No.579 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 10.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.579 of 2017

1. M.Ganesan
2. M.Ramakrishnan

... Revision Petitioners/
Petitioners/Plaintiffs

-VS-

1. K.Ponnammal
2. K.Velliraja
3. K.Thavamurugan
4. K.Velmurugan

... Respondents/Respondents/
Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and executable order dated 26.10.2016 passed in I.A.No.544 of 2016 in O.S.No.54 of 2014, on the file of the District Munsif Court, Mudhukulathur.

For Petitioners : Mr.J.Barathan
For Respondents : Mr.R.Karthikeyan – for R4
: No appearance – for R1 to R3



C.R.P.(MD).No.579 of 2017

WEB COPY

ORDER

The instant Civil Revision Petition has been filed by the petitioners under Article 227 of the Constitution of India, to set aside the fair and executable order dated 26.10.2016 passed in I.A.No.544 of 2016 in O.S.No. 54 of 2014, on the file of the District Munsif Court, Mudhukulathur.

2. The revision petitioners are the plaintiffs before the trial Court.

3. It appears that the petitioners filed the suit for permanent injunction in O.S.No.54 of 2014, in which, in I.A.No.239 of 2014 they sought for temporary injunction restraining the respondents not to interfere in the peaceful possession and enjoyment. In which, the trial Court, vide order, dated 23.03.2015 has granted temporary injunction. However, according to the petitioners, the respondents/defendants have put up construction, thereafter in spite of the order, dated 23.03.2015. Hence, they moved a contempt application on 28.06.2016. While disposing of the said application, the learned trial Judge had arrived at a conclusion that the petitioners



C.R.P.(MD).No.579 of 2017

themselves were very lethargic in protecting their property and that having permitted the defendants herein to complete the construction, it is not fair on their part to seek for the relief against the defendants for contempt of Court.

4. The learned counsel for the petitioners would submit that along with an application for contempt of Court, they also filed an application under Order 26 Rule 9 C.P.C, wherein, the trial Court, in view of the dismissal of contempt application, without assigning any reason, dismissed the Commissioner Application. Therefore, he prays to appoint an Advocate Commissioner by allowing this Civil Revision Petition.

5. In this regard, the learned counsel appearing for the petitioners invited the attention of this Court in respect of the written statement filed by the 4th defendant, wherein, in paragraph 4 of the written statement, the 4th defendant has categorically mentioned that there is no objection in appointing the Advocate Commissioner.



C.R.P.(MD).No.579 of 2017

WEB COPY

6. In such circumstances, the very dismissal of the Commissioner's Application by the learned trial Judge only on the ground of dismissal of the contempt application cannot be countenanced when they mentioned in the written statement expressing their willingness to have the Commission. Therefore, this Court is of the opinion that the very order of the learned trial Judge is liable to be set aside.

7. In the result, this Civil Revision Petition is allowed and the matter is remitted back to the trial Court and the trial Court is directed to appoint the Advocate Commissioner as prayed for in the petition in I.A.No.544 of 2016.

8. After this Court passed an order, the learned counsel for the petitioners would submit that subsequent to the bifurcation of Court, the instant suit which was earlier pending before the District Munsif, Mudhukulathur is now transferred to the District Munsif cum Judicial Magistrate Court, Kadaladi and renumbered as O.S.No.27 of 2019. Hence, the



C.R.P.(MD).No.579 of 2017

Registry is directed to mark copy to the present Court also. There shall be no order as to costs.

10.07.2023
(2/2)

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To

1. The District Munsif Court,
Mudhukulathur.
2. The District Munsif Court,
Kadaladi.



WEB COPY



C.R.P.(MD).No.579 of 2017

C.KUMARAPPAN,J.

ebsi

C.R.P(PD)(MD)No.579 of 2017

10.07.2023
(2/2)