



CRP(MD).No.2165 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

CRP(MD).No. 2165 of 2019

and

C.M.P(MD)No.11364 of 2019

1.Sundaran

2.Suseela

.. Petitioners/Petitioners/Plaintiffs

Vs.

1.Chandradhas

2.The Executive Officer,

Ezhudesom Town Panchayat,

Kanjampuram and Post,

Ezhu Desam Village,

Vilavancode Taluk, Kanyakumari District.

3.State of Tamilnadu,

rep., by the District Collector,

Kanyakumari District,

Nagercoil.

Additional

4.Joseph Kanmani

Additional

5.Rethina Jospin Thangam

.. Respondents/Respondents/Defendants

PRAYER : Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed by the learned Principal District Munsif, Kuzhithurai dated 17.10.2019 in I.A.No.335 of 2017 in O.S.No. 107 of 2017.



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For Petitioners : Mr.N.Dilipkumar
For Respondents : Mr.C.Baskaran
Government Advocate (for R2 &R3)
No appearance (for R1, R4 & R5)

ORDER

The plaintiffs in a suit for declaration that they are entitled to a right of pathway, free access to Nithiravilai Kanjampuram road and for a mandatory injunction directing the first defendant to remove the obstructions in the D schedule property are the revision petitioners.

2. While the suit was pending, the plaintiffs had filed I.A.No.335 of 2017 for appointment of Advocate Commissioner to note down the physical features of the property and to file a report along with a sketch. The said application was dismissed by the trial Court on the ground that the plaintiffs are attempting to collect evidence through appointment of Advocate Commissioner. The said order is under challenge in the present revision petition.

3. Though the respondents have been served, there is no appearance either in person or through counsel.



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4. A perusal of the prayer in the plaint would clearly indicate that the plaintiffs are seeking declaration with regard to the pathway right and also, for a mandatory injunction for removal of obstructions in the D schedule property. Whether there is a pathway or not, or whether there is any obstruction in the said pathway in the D schedule property or not, cannot be brought to the notice of the Court through oral or documentary evidence. Unless an Advocate Commissioner is appointed to note down the physical features of the property along with rough sketch, these facts cannot be brought to the notice of the Court. Therefore, I find that the order of the trial Court dismissing the application in I.A.No.335 of 2017 in O.S.No.107 of 2017 on the ground that the plaintiffs are attempting to collect evidence is erroneous. Accordingly, the order impugned in the revision petition is set aside and I.A.No.335 of 2017 is allowed. The learned Principal District Munsif, Kuzhithurai, is directed to appoint Advocate Commissioner with a direction to file a report within a period of 30 days from the date of issue of warrant.

5. With the above observations, the Civil Revision Petition



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stands allowed. No costs. Consequently, connected Miscellaneous
Petition is closed.

03.03.2023

Index : Yes / No
Internet : Yes / No
Rmk

To
1.The Principal District Munsif, Kuzhithurai.

R.VIJAYAKUMAR ,J.,



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Rmk

Order made in
CRP(MD).No.2165 of 2019

Dated:
03.03.2023