



C.R.P(MD)No.2408 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.02.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.2408 of 2022
and
C.M.P(MD)No.11646 of 2023

1.Suresh

2.Sumathi

... Petitioners/Petitioners/
Plaintiffs

Vs.

Angamuthu

... Respondent/Respondent/
Defendant

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order made in I.A.No. 383 of 2021 in O.S.No. 146 of 2021 dated 23-08-2022 on the file of the District Munsif, Kovilpatti by allowing this civil revision petition

For Petitioner : Mr.A.R.Kannappan

For Respondent : Mr.M.Prabhu

ORDER

The present revision petition has been filed by the plaintiffs in a suit for declaration that the 3rd schedule property is a common pathway



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and for mandatory injunction for removal of a gate put up by the defendant in the said common pathway and for permanent injunction not to disturb the access of the plaintiffs to the 1st and 2nd schedule properties through the 3rd schedule property.

2. A perusal of the schedule of property in the plaint indicates that the plaintiff claims that a 20 feet width pathway is shown as the 3rd schedule property. The defendant in Paragraph No.8 of the written statement has admitted about the putting up of the gate, but has contended that the gate was put up in the year 2012 itself. However, there are no averments in the written statement disputing the width of the pathway in the 3rd schedule property.

3. The plaintiffs had filed I.A.No.383 of 2021 for appointment of Advocate Commissioner to note down the encroachments made by the defendant and to file a report along with the help of a Surveyor. The trial Court had dismissed the application on the ground that there is no dispute between the parties on the measurement or the physical features of the suit schedule property. The trial Court had further found that the existence of a gate in the 3rd schedule property is admitted by the



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defendant. On these grounds, the application has been dismissed by the trial Court. Challenging the same, the present revision petition has been filed.

4. The learned counsel appearing for the revision petitioners/plaintiffs has contended that the defendant has disputed the width of the pathway found in the 3rd schedule property and hence, appointment of Advocate Commissioner is necessary.

5. A careful perusal of the written statement will clearly disclose that the defendant has not disputed the width of the pathway in the 3rd schedule property and hence, this Court does not find any illegality or infirmity in the order passed by the trial Court in dismissing the application for appointment of Advocate Commissioner. Therefore, this Civil Revision Petition stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

20.02.2023

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

- 1.The District Munsif,
Kovilpatti.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
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