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CRP.No.797 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 27 / 11 / 2024

ORDERS PRONOUNCED ON : 21 / 12 / 2024

CORAM

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

CRP.NO.797 OF 2023
AND CMP.NO.6089 OF 2023

1. Bharathiraja
S/o.Chinnapaiyan
2. Kokila
W/o.Bharathiraja
3. Chinnapaiyan
S/o.Venu @ Rama Gounder
4. Chinnapillai
W/o.Chinnapaiyan
All are residing at
No.3/125, Vilampatty Village,
Anuppur Tharappur,
Vazhapadi Taluk,
Salem – 636 139.

... Petitioners / Petitioners /
Defendants 1 to 4

Vs.

M.Vivek
S/o.Madeswaran
No.6/113, Koothathupatti Pirivu,
Belur Road, Vazhapadi Taluk,
Salem District.

... Respondent / Respondent /
Plaintiff



CRP.No.797 of 2023

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the Order and Decree dated September 26, 2022 in I.A.No.161 of 2021 in O.S.No.37 of 2021 on the file of the District Munsif-Cum-Judicial Magistrate Court, Vazhapadi.

For Petitioners : Mr.S.Prabhu

For Respondent : Mr.P.Jagadeesan

ORDER

This Civil Revision Petition is directed against the Order and Decree dated September 26, 2022 passed in I.A.No.161 of 2021 in O.S.No.37 of 2021 on the file of 'District Munsif-Cum-Judicial Magistrate, Court, Vazhapadi' [henceforth 'Trial Court'].

2. The Revision Petitioners herein are the defendants 1 to 4 and the respondent herein is the plaintiff in the Suit in O.S.No.37 of 2021 before the Trial Court. For the sake of convenience, hereinafter the parties will be referred to as per their array in the Original Suit before the Trial Court.

3. The plaintiff is a Lessee under the defendants 1 and 2. According to the plaintiff, after leasing out the property, the Lessors are



attempting to interfere with the Demised Property illegally and thereby, restraining the plaintiff from starting business in the Demised Property.

Hence, he filed a suit against the defendants for bare injunction not to interfere with his peaceful possession and not to cause any disturbance in starting industry in the Demised Property.

4. The defendants filed written statement stating that the plaintiff in the name of alleged lease deed tried to encroach more extent beyond the Demised Property. Further, the plaintiff obliterated the bund and cut the trees. Hence, the defendants filed an application under Order 26 Rule 9 of Code of Civil Procedure, 1908 (CPC) seeking appointment of an Advocate Commissioner along with Surveyor to note down the physical features and fix the boundaries of the demised property.

5. The Trial Court after hearing both sides dismissed the application by observing that there is no boundary dispute between the plaintiff and the defendants and hence, if the Advocate Commissioner is appointed, it will cause delay.



6. Being aggrieved by the Order passed in the Trial Court, the defendants have filed this Revision Petition.

7. The learned Counsel for the Revision Petitioner/defendants submitted that the respondent / plaintiff falsely filed a Suit of Bare Injunction against the Lessors, alleging that the defendants caused disturbance to the plaintiff. The true fact is that the plaintiff wants to obliterate the existing bund and form new pathway beyond the Demised Property, in which the plaintiff has no right. Accordingly, to find out the mischiefs done by the plaintiff and to note down the physical features, and to fix the boundaries of the Demised Properties, appointment of an Advocate Commissioner is essential. The Trial Court failed to appreciate the facts and circumstances of the case and erroneously dismissed the petition. Accordingly, he prayed to allow the Revision Petition.

8. Per contra, the learned Counsel for the respondent / plaintiff would argue that it is the defendants who attempted to cause disturbance to the plaintiff. The Trial Court rightly dismissed the petition. There is no warrants to interfere with the impugned Order of the Trial



CRP.No.797 of 2023

Court. Accordingly, they sought for dismissal of the Civil Revision
Petition.

9. This Court has considered both sides submissions.

10. The plaintiff is a Lessee and the defendants 1 and 2 are Lessors. According to the plaintiff, the defendants tried to enter the Demised Property and caused disturbance. According to the defendants, the plaintiff has encroached more extent beyond the Demised Property and caused damages to the property beyond the Demised Property.

11. The crux of the matter is whether the plaintiff encroached the property beyond the Demised Property, and whether the plaintiff damaged the pathway and cut the trees as alleged by the defendants. Hence, the appointment of an Advocate Commissioner is essential to note down the physical features, to identify the Suit Property and to arrive at a just conclusion.

12. Considering the facts and circumstances of the case, this Court opines that if an Advocate Commissioner visits the Suit Property



CRP.No.797 of 2023

along with Surveyor and files a report, it will be helpful for the Court to decide the issue at the end of the trial. Hence, this Court is inclined to allow the Revision Petition.

13. Accordingly, the Revision Petition is allowed. The impugned Order passed in Interlocutory Petition in I.A.No.161 of 2021 is hereby set aside and I.A.No.161 of 2021 is allowed. The Trial Court is directed to appoint an Advocate Commissioner along with Surveyor for the petition mentioned purpose. In view of the facts and circumstances, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

21 / 12 / 2024

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
VV/TK

To

The District Munsif-Cum-Judicial Magistrate Court,
Vazhapadi.



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CRP.No.797 of 2023



WEB COPY



CRP.No.797 of 2023

R.SAKTHIVEL, J.

VV/TK

PRE DELIVERY ORDER MADE IN
CRP.NO.797 OF 2023

21 / 12 / 2024