



CRP No.315 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.315 of 2024

Rashmi Jain

... Petitioner

Vs.

Arulmighu Om Kaliamman Kovil,
Kaveri Road,
Karungalpalayam, Erode 3
rep. By its Hereditary Trustee
and Present Executive Balakrishnan

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 14.09.2023 in I.A.No.3 of 2023 in OS No.41 of 2022 on the file of the Principal District Munsif, Erode.

For Petitioner

: Mr.M.Guruprasad



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ORDER

The civil revision petition is filed to set aside the fair and final order in I.A.No.3 of 2023 in OS No.41 of 2022 dated 14.09.2023 on the file of the Principal District Munsif, Erode.

2. The revision petitioner is the defendant and the respondent is the plaintiff in OS No.41 of 2022 on the file of the learned Principal District Munsif, Erode. The respondent/plaintiff has filed the suit for permanent injunction against the petitioner/defendant. Pending suit, the petitioner/defendant had filed an application in IA No.3 of 2023 for appointment an advocate commissioner to note down the physical features in and around the plaint schedule property. The trial court, by order dated 14.09.2023, had dismissed the said application on the ground that commissioner is not necessary to collect evidence and it can be proved by letting oral and documentary evidence. Challenging the said order, the petitioner has filed the present civil revision petition.



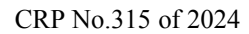
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3. Learned counsel for the petitioner submits that in order to measure the pathway in the plaint schedule property, a commissioner has to be appointed and hence seeking to allow the Revision.

4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. On a perusal of the records, the fact reveals that the respondent filed the suit for permanent injunction against the petitioner herein in OS No.41 of 2022. In the said suit, the petitioner had filed an application in IA No.3 of 2024, for appointment of an advocate commissioner to measure the length and breadth of the pathway in the plaint schedule property. Admittedly, the petitioner has not filed any counter claim before the court below claiming right of pathway over the plaint schedule property. Under such circumstances, appointment of an advocate commissioner for the purpose of noting down the pathway over the property is unwarranted. If any pathway is existing over the plaint schedule property, it can be proved



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To
The Principal District Munsif, Erode.



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V.SIVAGNANAM, J.

(mrn)

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