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C.R.P.(PD).No.126 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.126 of 2023 &
C.M.P.No.1067 of 2023

Palanisamy

... Petitioner

-Versus-

1.Venkatesan

2.Kalaivani

3.Nithishkumar

4.Ramkumar

5.Vishwanathan

... Respondents

Revision filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 21.11.2022 passed in I.A.No.555 of 2021 in O.S.No.83 of 2021 on the file of the District Munsif Court at Sankarapuram, Villupuram District.

For Petitioner : *Ms.M.Rakhi*
for Mr.R.Jayaprakash

For Respondents : *Ms.M.Ramya*

ORDER

This revision arises against the order passed in I.A.No.555 of 2021 in O.S.No.83 of 2021 on the file of the District Munsif Court at Sankarapuram.



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2. O.S.No.83 of 2021 is a suit for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the property. According to the plaintiff, he is having a land consisting of hut in the eastern side of the suit property and a toilet situated in the back immediately to the rear of the hut. According to him, the suit property was used as a pathway in order to have an access to the lavatory. He would further plead that the defendants without any right, title or interest over the suit property has put up a shed with steel sheets preventing the access of the plaintiff to the pathway.

3. On entering appearance, a written statement was filed by the defendants stating that there is no pathway in and over the suit property and that the property has not been described properly and the entire extent of the property and the description thereof has been wrongly given.

4. Taking note of this written statement, an application has been filed for appointment of an Advocate Commissioner. The said application was allowed by the learned trial judge, against which the present revision.



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5. Heard Ms.M.Rakhi for Mr.R.Jayaprakash for the petitioner and Ms.M.Ramya for the respondent.

6. The aforesaid narration of the facts would go to show that the issue that the court has to decide is whether there is a pathway in and over the suit property or not. For this purpose, the learned trial judge has exercised his discretion and has felt that the appointment of advocate commissioner, who would submit a report, would enable him to decide the matter in issue, namely, the existence of the pathway over the suit schedule mentioned property.

7. On one hand, we have the case of the plaintiff asserting the pathway and on the other, the defendants state that no such pathway exists. If an advocate commissioner visits the suit property, the actual lie of the property would come out by way of his report.

8. The Supreme Court in the case of ***Harayana Wakf Board vs. Shanti Sarup and Others, (2008) 8 SCC 671*** has held that when there is a dispute in the identification of the property, the court shall appoint a commissioner for the



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purpose to visit the suit property and submit a report.

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9. In this case, there is a dispute as regards the existence of the pathway.

Applying the judgment of the Supreme Court referred to *supra* to the facts of the present case, I do not find any error or irregularity in the order. Accordingly, this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

04.06.2024

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order



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To

1.The District Munsif Court at Sankarapuram, Villupuram District.



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V.LAKSHMINARAYANAN, J.

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