



CRP No.948 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2024

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THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

CRP No.948 of 2024 &  
CMP.No.4750 of 2024

1.K.V.Subburaman  
2.V. Chinnasamy : Petitioners

versus

1.N. Dharmalingam  
2.Prema  
3.Thangamani  
4.Santhi  
5.Raja Gokul  
6.Sanjeevi : Respondents

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 23.11.2023 in IA.No. 4 of 2023 in OS.No. 52 of 2013 on the file of the Additional District Munsif Court, Pollachi

For Petitioners : Mr.C.RPrasanan

For Respondents : No appearance



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ORDER

This civil revision petition arises against the order of the learned Additional District Munsif at Pollachi in I.A.No.4 of 2023 in O.S.No.52 of 2013 dated 23.11.2023.

2. O.S.No.52 of 2013 is a suit for bare injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. The schedule of the suit is extracted hereunder:

“இதன் மத்தியில் 6 விட்டம் போட்ட 5 அங்கண மேற்கு கிழக்கு வாசலாய் மேல் கூரை இல்லாமல் சிகஸ்தான வில்லைவீடும், இதன் முன்புறம் மேற்கு வாசலாய் இடிந்து போன கடை வீடாய் ஜாகாவும் பின்புறம் உள்ள காலி இடமும் சிகஸ்தாக கோப்பு சமான் வகையறாக்கள்.”

3. According to the plaintiffs, his father came by the property by virtue of sale deed dated 15.03.1962. Thereafter, in a partition that had been entered into between the family members of the plaintiffs, a larger portion including the suit property had been allotted to him on 16.12.2010. They



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would state that the defendants who are neighbours have no right, title or interest over the suit schedule property. They would plead that the said passage exclusively belongs to the plaintiffs and the defendants have attempted to create a non-existing right over the pathway.

4. On entering appearance, the defendants filed a detailed written statement. According to them, they purchased the property in 1972 and in the said document, in addition to the property purchased by them, they were also entitled to use the pathway which is mentioned as a suit property.

5. After the evidence of both sides were over, when the matter was posted for arguments, an application was filed for appointment of an Advocate Commissioner to measure the suit property on the basis of the sale deed dated 15.03.1962, partition deed dated 16.12.2010 and the sale deed of the defendants dated 14.02.1972. This application was received in I.A.No.4 of 2023.

6. The learned Subordinate Judge issued notice in the said application.



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The objection of the defendants 1 to 3 with the other defendants 4 to 7 remaining exparte was that the suit has been pending for the past ten years and no effort had been taken by them to take out an application for appointment of an Advocate Commissioner. In addition on the merits of the case, they would state that their house is facing south along with the right to use the front yard to reach the road on the eastern side. They would plead that their property is an old one and the superstructure has not changed in all those years. They would plead that they have marked the photographs to substantiate the same. They would plead that the plaintiffs have encroached upon the property which is the front yard left for their use.

7. The learned Trial Judge dismissed the application on grounds of delay as well as on the ground of whether the passage falls within the area of the plaintiffs or whether the defendants also have the right has to be proved only by way of documents, against which the present revision.

8. This matter came up for admission before this Court on 24.04.2024. Notice was issued to the respondents. The respondents were



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served with notice on 29.04.2024 privately and the court notice was served on 09.05.2024. Despite both modes of service, there is no representation for the contesting respondents.

9. Mr.C.Prasanan would argue that whether the lie of the property can be found out only if an Advocate Commissioner is appointed. He would plead that the pathway to an extent of 12 feet on the north-eastern side of the property had been left out by the plaintiffs for their convenient enjoyment.

10. In addition to the argument, a perusal of the plaint also shows that the specific plea of the plaintiffs is that the pathway is situated within the four boundaries of their property.

11. Per contra, from the counter of the defendants, it is clear that they would plead that the front yard was left open and their extent of the property is about 41 x 19 sq.ft.



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12. The issue that has to be decided in the suit is whether the pathway falls within the plaintiffs' property or whether it is outside the plaintiffs' property over which the defendants would also have the right.

13. Insofar as the title of the plaintiffs and the defendants are concerned, to their respective portions are not in dispute. The dispute relates only to the vacant land abutting both the property. No doubt there has been considerable delay on the side of the plaintiffs in moving the application. However, I am not inclined to dismiss the revision on that ground. This is because a report from the Commissioner will assist the Court at the time of pronouncing the judgment in the suit.

14. The Trial Court would necessarily have to answer on the extent of the plaintiffs' property and the extent of the defendants' property and whether the pathway falls in common or whether it falls exclusively in the property of the plaintiffs. Since there is a dispute with respect to where the pathway lies, I feel if an Advocate Commissioner goes and visits the property, and submits a report, it would enable the Court to decide the issue



15. In the light of the above discussion, the order in I.A.No.4 of 2023 in O.S.No.52 of 2013 dated 23.11.2023 is set aside. The learned Additional District Munsif, Pollachi shall appoint an Advocate Commissioner, who is sufficiently well versed on the civil side. The Commission need not take the assistance of the Government surveyor as he is irrelevant. The Commissioner shall measure the property on the basis of the two sale deeds namely 15.03.1962 and 14.12.1972 and submit a report to the court.

16. It is made clear that both the parties will not be entitled to let in fresh evidence on the basis of the Commissioner's report. After receipt of the Commissioner's report, the Court shall take into consideration the report and render a judgment in the suit.

17. With the above direction, this civil revision petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.



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Index : Yes/No

Speaking Order/Non-speaking order

Neutral Citation : Yes/No

To

The Additional District Munsif Court,  
Pollachi



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**V.LAKSHMINARAYANAN, J.**

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