



WEB COPY

C.R.P. (PD) No.3456 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.09.2024

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THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

**C.R.P. (PD) No.3456 of 2024
and C.M.P.No.18744 of 2024**

J.Kottammal

... Petitioner

Vs.

V.Lakshmanan

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Code of Civil Procedure, against the fair and decretal order dated 05.01.2024 made in I.A.No.3 of 2023 in O.S.No.105 of 2021 on the file of the Principal District Munsif Court, Perambalur.

For the Petitioner : Mr.R.T.Vishnu

ORDER

This Civil Revision Petition is at the instance of the plaintiff. He presented the suit in O.S.No.105 of 2021 on the file of the Principal District Munsif, Perambalur.

2. On service of summons, the defendant filed his written statement



and counter claim. In his counter claim, he has specifically pleaded that the plaintiff has encroached upon the property that belongs to him. Consequently, he sought for recovery of possession of the said extent of 2 feet X 28 ½ feet. Thereafter, he took out an application for appointment of an Advocate Commissioner. The said application stood allowed. Hence, the revision.

3. Heard, Mr.R.T.Vishnu, for the Civil Revision Petitioner.

4. Mr.R.T.Vishnu would submit that in the nature of a suit and counter claim, it is the duty of the plaintiff to prove the encroachment by letting oral and documentary evidence and cannot seek for appointment of an Advocate Commissioner to note down the physical features of the property by filing an application. The learned counsel would rely upon the Judgment of this Court in *Selvamariammal Vs. Kanagavel* (2018 SCC OnLine Mad 7587).

5. I have carefully considered the arguments of the learned counsel for the petitioner.

6. Mr.R.T.Vishnu is correct in the proposition, with respect to the title.



It is the duty of the respondent herein as the petitioner in the counter claim, to prove the same. However, there is a dispute on the extent of the properties of the plaintiff and the defendant.

7. It is the case of the plaintiff that the 57 feet on which he has laid a concrete pathway belongs to him and falls within the four boundaries of his property. Whereas it is the case of the defendant that the said pathway falls within his portion of the property. Since there is dispute over the measurements of the property, the learned Trial Judge in his discretion felt that an Advocate Commissioner ought to be appointed.

8. I do not find any error in the said view taken by the learned Judge, this is because, a picture would come before the Court only on physical measurements of the property by an Advocate Commissioner. Further, there is no dispute that the plaintiff admits that the defendant is the owner of the adjacent property.

9. In so far as the Judgment referred to above, in paragraph No.16 of the said Judgment, makes it clear that if the learned Trial Judge felt that, during the course of trial, it is necessary for appointment of an Advocate



Commissioner, it should do so *suo motu*, without waiting for an application by either party.

10. In the impugned order, the learned Trial Judge has given cogent reasons, as is clear from page Nos.17 and 18 of the typed set of papers. In fact, he has followed the view taken by the learned Judge in the aforesaid Judgment, because, the stage of the suit is cross examination of P.W.1. At that stage, the learned Trial Judge had felt that an Advocate Commissioner will help the Court to elucidate the matter in issue and thereby assist him in rendering the Judgment.

11. Therefore, the reasons being valid, I do not find any necessity to interfere with the order. Accordingly, this Civil Revision Petition stands dismissed. No costs.

02.09.2024

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Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

Neutral citation : Yes / No



C.R.P. (PD) No.3456 of 202 .

To

The Principal District Munsif, Perambalur.



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V.LAKSHMINARAYANAN, J.,
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