



CRP.3414 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2024

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

**C.R.P.No.3414 of 2023 &
CMP.No.21188 of 2023**

1. P. Venkata Subramanian
2. V.Vignesh Kumar ... Petitioners

Vs.

P.Venkatachalam ... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 01.08.2023 made in I.A.No.815 of 2019 in O.S.No.429 of 2019 on the file of the Principal Subordinate Judge, Tiruppur.

For petitioners : Mr.V. Karthikeyan

For Respondent : Mr.R.Srinivas,
for Mrs. Mythili Srinivas



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ORDER

This Civil Revision Petition arises against the order of Principal District Munsif, Thiruppur in I.A.No.815 of 2019 in O.S.No.429 of 2019.

2. O.S.No.429 of 2019 is a suit purported to have been filed invoking provisions of section 6 of the Specific Relief Act, r/w.Order 7, Rule 1 of CPC. The relief sought for in the suit is that in the second item of the suit property, the defendants have encroached upon the same and had put up fencing, thereby, preventing the access of the plaintiff to the said portion. The second item of the suit property is an area measuring 12 feet x 2000 feet. It is to an extent of 55 cents. It divides the holdings of the plaintiff and the defendants.

3. The plaintiff had originally presented O.S.No.401 of 2009 on the file of Principal District Munsif, Thiruppur for a declaration of title. According to the plaintiff, the said suit having been dismissed for default,



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the defendants took advantage of the same and had encroached upon the suit second item. The defendants are yet to go on record by way of defence.

4. An application was taken out in I.A.No.315 of 2019 for appointment of an Advocate Commissioner to note down the physical features of the property and to submit a report. That was resisted by the defendants stating that Advocate Commissioner is irrelevant for the suit purpose. He would plea that the suit O.S.No.401 of 2009 having been dismissed for default, it was with an ulterior motive that the plaintiff has presented the present suit as well as the application for appointment of an Advocate Commissioner. The defendants would also state that the property had already been surveyed and measured by the Revenue Department and hence to redo the exercise through an Advocate Commissioner is absolutely unnecessary.

5. The learned trial Judge after considering the petition and counter,



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allowed the application by way of an order dated 01.08.2023. Hence, this Revision.

6. Heard Mr.V.Karthikeyan, learned counsel appearing for the petitioner and Mr.R.Srinivas, learned counsel appearing for Mrs.Mythili Srinivas, for the respondent.

7. The suit for title under section 6 of Specific Relief Act also invokes the provision of Order 7, Rule 1 of CPC. The relief sought for is that of mandatory injunction to remove the encroachment allegedly made by the defendant on the plaintiff's portion of the property.

8. Mr.R.Srinivas, appearing for the respondent would state that taking advantage of the dismissal of the previous suit, the defendants have put up a fencing including the second item of the suit property in their holdings.



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9. Mr.V.Karthikeyan appearing for the petitioners would state that such a plea is totally false. He would state that the fencing was pre-existing and in order to get over the dismissal of the previous suit, the plaintiff had come forward with the present action.

10. In a suit, an Advocate Commissioner was appointed under Order 26, Rule 9, CPC for the purpose of eliciting the matter in issue. The matter in issue in the present case is whether there has been an encroachment made by the defendant on the plaintiff's property namely, the second item of the suit property. The issue of encroachment cannot be found out by way of records alone. The records will show the respective holdings of the parties. However, the question of whether the defendant had encroached or not, would necessarily require the Commissioner to visit the same and submit a report. Therefore, I cannot take any exception to the order passed by the learned trial Judge.



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11. The Advocate Commissioner who would visit the suit property should not only measure the holdings of the plaintiff, but also the holdings of the defendant and identify the demarcating area as per the documents that will produced by the parties before the Commissioner. The Commissioner shall take assistance of a surveyor for the purpose of identifying the property and also note the boundaries of both the properties. He shall also submit a report as regards to whether the fencing has been newly put up or is a pre-existing one. He will also note the damages alleged to have been caused to the fencing without finding as to at whose instance, the damage has been caused.

12. The cost of the Advocate Commissioner shall be borne by the plaintiff. Considering the fact that the parties have been litigating for more than a decade, the learned Principal Subordinate Judge, Tiruppur is requested to appoint an Advocate Commissioner, who is well settled in civil side.



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13. With the above directions, the Civil Revision Petition stands dismissed without costs. Consequently, the connected miscellaneous petition is closed.

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Index: yes/no
Internet:yes/no
msr

To
The Principal Subordinate Judge, Tiruppur



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V. LAKSHMINARAYANAN, J.

msr

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