



C.R.P.(MD)No.155 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 23.08.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.155 of 2024

and

C.M.P.(MD)No.657 of 2024

Krishnasamy

... Petitioner / Respondent / Defendant

Vs.

P.Prabakaran

... Respondent / Petitioner / Plaintiff

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 21.08.2023 passed in I.A.No.266 of 2022 in O.S.No.37 of 2022 on the file of the District Munsif Court, Thiruvaiyaru to appoint an advocate commissioner, allow the above civil revision petition.

For Petitioner : Mr.S.Ramu

For Respondent : Mr.M.P.Senthil

ORDER

Heard both sides.



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2. The defendant in O.S.No.37 of 2022 on the file of the District Munsif Court, Thiruvaiyaru is the revision petitioner. The plaintiff filed I.A.No.266 of 2022 for appointing an advocate commissioner. Vide order dated 21.08.2023, IA was allowed. Challenging the same, the civil revision petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of grounds and called upon this Court to set aside the impugned order and grant relief as prayed for.

4. The learned counsel appearing for the respondent submitted that the case on hand involves pathway and that therefore, appointing an advocate commissioner will elucidate certain matters. It is submitted that an advocate commissioner will note down the physical features of the property and his report would definitely aid and facilitate the court below to dispose of the suit effectively. He called upon this Court to dismiss the civil revision petition.

5. I carefully considered the rival contentions and went through the materials on record. O.S.No.37 of 2022 is a suit for bare injunction.



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The dispute appears to be regarding the suit pathway. The court below has allowed I.A.No.266 of 2022 filed by the plaintiff so that the report of the advocate commissioner would indicate if any encroachment has been committed by the defendant. An advocate commissioner cannot be appointed for such purposes to gather evidence. The impugned order is set aside. The Civil Revision Petition is allowed. No costs.

23.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

The District Munsif Court, Thiruvaiyaru.



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G.R.SWAMINATHAN, J.

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