



CRP(MD).No.764 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.11.2024

CORAM

THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.764 of 2022 and
CMP(MD).No.3082 of 2022

1.Lakshmi
2.Paramasivam

: Petitioners/ Plaintiffs

Vs.

1.Veeraputhiran
2.Palnivel
3.Vadivel
4.Rajkumar
5.Selvi

6.The Government of Tamil Nadu,
through its representative,
The District Collector
Trichy.

7.The Tahsildar,
Taluk office,
Thuraiyur, Trichy District.

8.The Village Administrative Officer,
O/o the Village Administrative Officer,
Kannanur Post, Thuraiyur Taluk,
Trichy District.

: Respondents / defendants



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PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.3 of 2020 in O.S.No.90 of 2020, dated 02.02.2021 on the file of the Sub Court, Thuraiyur.

For Petitioners : Mr.Mohammed Haneef
For respondents 1 to 5 : No appearance
For respondents 6 to 8 : Mr. B. Saravanan
Additional Government Pleader

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order, dated 02.02.2021 passed in I.A.No.3 of 2020 in O.S.No.90 of 2020, on the file of the Sub Court, Thuraiyur.

2. The revision petitioners as plaintiffs filed the above said suit for declaration of title and mandatory injunction and for permanent injunction. During the pendency of the suit, the revision petitioners took out an application in I.A.No.3 of 2020 for appointment of an Advocate Commissioner to note down the physical features and to find out the encroachment made by the respondents / defendants 1 to 5. However, the same was resisted on the side of the respondents 1 to 5. The trial Court



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dismissed the said application stating that the necessity for appointment of an Advocate Commissioner is not established by the petitioner. Aggrieved by the same, the present revision is preferred.

3. The learned counsel appearing for the revision petitioners would submit that unless the Advocate Commissioner is appointed to verify the alleged encroachment in the suit, a fair adjudication cannot be made in this suit and hence, it is necessary for appointment of an Advocate Commissioner. While so, the trial Court has erroneously dismissed the said application.

4. Even though the names of the respondents 1 to 5 printed in the cause list no one has appeared on behalf of the respondents. . The learned Additional Government Pleader appearing for the respondents 6 to 8 have no objection for allowing this Civil Revision Petition.

5. Heard and perused the materials available on record.

6. It is the specific case of the revision petitioners that the first petitioner's husband viz., (Late) Subbiah is the owner of the suit property,



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who died intestate on 25.03.1988. The suit property was in continuous enjoyment by the revision petitioners. After the demise of the first petitioner's husband they have shifted to the parental village and used to visit the house situated in the suit property during festival season. Taking advantage of the same, the respondents / defendants had encroachment upon the suit property and constructed a concrete structure. Though the petitioners with the help of village elders made all efforts to stop the said construction, the same was ended in vain. Hence, they were constrained to file the above suit for declaration of title and mandatory injunction. In order to ascertain the said encroachment the petitioners have filed an application for appointment of an Advocate Commissioner for measuring the suit property with the help of Surveyor in I.A.No.3 of 2020. However, the said application was dismissed by the trial Court. On perusal of the impugned order it is seen that, the learned trial Judge simply dismissed the application by stating that no prima facie case is made out by the petitioners to allow the said application. When there is an allegation about encroachment in the property, it is very much necessary for appointment of an Advocate Commissioner to find out whether there is any encroachment in the suit property to have a fair adjudication. Without considering the above said fact the trial Court has erroneously dismissed the said



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application which is liable to be set aside and accordingly, set aside

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7. In the result, this Civil Revision Petition is allowed. The trial Court is directed to appoint an Advocate Commissioner to inspect the suit property with the help of Surveyor and file a report within a period one month from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes/ No
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To

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