



C.R.P.(MD) No.2466 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.11.2024

CORAM

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.2466 of 2024

and

C.M.P.(MD) No.13851 of 2024

1.Vijayarani
W/o.Chellasamy

2.Poornam
W/o.Kadarkarai

3.Panneer
S/o.Ayyappan

... Petitioners

Vs.

1.Vaithiyalingam
S/o.Ayyangannu

2.Murugan
S/o.Ayyangannu

3.The Panchayat President,
Sernthamangalam Panchayat,
Thirumalapuram,
Sankarankovil Taluk,
Tenkasi District.

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 18.03.2024 made in I.A.No.6



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of 2023 in O.S.No.87 of 2014 by the learned Additional District Munsif Court, Sankarankovil, Tenkasi District, as illegal.

For Petitioners : Mr.T.Indrachithu
For R1 & R2 : Mr.S.A.Ganapathyraman
For R3 : Mr.B.Saravanan
Additional Government Pleader

ORDER

The present Civil Revision Petition has been filed against the order dated 18.03.2024 passed in I.A.No.6 of 2023 in O.S.No.87 of 2014 on the file of the Additional District Munsif Court, Sankarankovil, Tenkasi District.

2. The revision petitioners are the plaintiffs in the above suit in O.S.No.87 of 2014. The suit was filed seeking declaratory relief, as well as mandatory and permanent injunctions. During the pendency of the suit, the revision petitioners/plaintiffs filed an Interlocutory Application in I.A.No.429 of 2014, seeking the appointment of an Advocate Commissioner to inspect the second schedule of the suit property, measure it, and file a report. The application was allowed, and the



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Advocate Commissioner was appointed. The Advocate Commissioner subsequently filed his report.

3. However, the revision petitioners/plaintiffs filed an application in I.A.No.6 of 2023, seeking the reopening of the case for re-issuance of the Advocate Commissioner's appointment to visit the suit property again and file a report along with a rough sketch, or alternatively, to appoint a new Advocate Commissioner for the same purpose, alleging that the earlier report was defective. The trial court dismissed the application. Aggrieved by this, the present Civil Revision Petition has been filed.

4. Mr.T.Indrachithu, the learned counsel for the revision petitioners/plaintiffs, would submit that the first item in the first schedule of the suit properties is a residential house, and the first revision petitioner/first plaintiff is entitled to the same on the strength of the registered Sale Deed executed in her favour; that the second item in the first schedule of the suit properties is another residential house, and the second and third revision petitioners/second and third plaintiffs are entitled to the same on the strength of the registered Partition Deed dated 30.11.2011; that the second schedule of the suit properties is a common



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pathway, which is the subject matter of the dispute; that the said pathway is merely an approach to the first and second items in the first schedule of the suit properties; that the revision petitioners/plaintiffs have no other pathway except for the same; and that the first and second respondents/first and second defendants have constructed an illegal compound wall across the pathway.

5. The learned counsel for the revision petitioners/plaintiffs would further submit that although the Village Administrative Officer, Sernthamangalam, after visiting the site and conducting a survey through the surveyor, found the encroachment and instructed the first and second respondents/first and second defendants to remove the compound wall, the third respondent, the Panchayat President, did not take any steps to demolish and remove the compound wall; that, therefore, the revision petitioners/plaintiffs filed a suit for declaration, permanent injunction, and mandatory injunction; that thereafter, the revision petitioners/plaintiffs filed I.A.No.429 of 2014 for the appointment of an Advocate Commissioner to inspect the second schedule of the suit property, measure it, and file a report, which was allowed, and the Advocate Commissioner filed his report; that in the report, the Advocate



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Commissioner, who made a local inspection of the suit properties to note down the physical features, failed to give entire details regarding the physical features and the measurement of the second schedule property, and instead made the contradictory statement that an alternative pathway was available to the revision petitioners/plaintiffs; that the Advocate Commissioner inspected the property without the assistance of the surveyor and did not conduct a proper survey; that, consequently, the revision petitioners/plaintiffs were constrained to file another I.A.No.6 of 2023 for reopening the case, re-issuing the Advocate Commissioner's appointment, or in the alternative, appointing a new Advocate Commissioner; and that the trial court, without considering the aforementioned facts and without providing any satisfactory reasons, dismissed the application.

6. On the other hand, Mr.S.A.Ganapathyraman, the learned counsel for the first and second respondents/first and second defendants, and Mr.B.Saravanan, the learned Additional Government Pleader for the third respondent/third defendant, would submit that the order passed by the trial court in I.A.No.6 of 2023 is in accordance with law and requires no interference.



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WEB COPY 7. Heard on both sides. Records perused.

8. It is admitted by the learned counsel for the revision petitioners/plaintiffs that neither objections to the report of the Advocate Commissioner nor an application to scrap the report was filed by the revision petitioners/plaintiffs, on the ground that it was not satisfactory. While so, the revision petitioners/plaintiffs cannot maintain an application for appointment of a fresh Advocate Commissioner or for re-issuance of the Advocate Commissioner's appointment, without scraping the earlier report of the Advocate Commissioner and without raising any objections to the same. Hence, the present Civil Revision Petition is devoid of merits.

9. However, the revision petitioners/plaintiffs are at liberty to file objections to the earlier report of the Advocate Commissioner or to file an application to scrap the same. The same shall be considered by the trial court after conducting an enquiry with regard to the report filed by the Advocate Commissioner.



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WEB COPY 10. In the result, this Civil Revision Petition is dismissed. No costs.

Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

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The Additional District Munsif,
Sankarankovil,
Tenkasi District.



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K.GOVINDARAJAN THILAKAVADI, J.

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