



C.R.P(MD)No.1762 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 12.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

C.R.P(MD)No.1762 of 2023
and C.M.P. (MD)No.8801 of 2023

Suja ...Petitioner/Petitioner/Plaintiff

Vs.

1.Alphonse Xavio
2.Heelan
3.Kishore ...Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 18.04.2023 passed in I.A.No.4 of 2023 in O.S.No.114 of 2016 on the file of the Additional District Munsif Court, Ambasamudram.

For Petitioner : Mr.R.J.Karthick

For Respondents : Mr.N.Vignesh



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ORDER

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This Civil Revision Petition is filed against the order dated 18.04.2023 made in I.A.No.4 of 2023 in O.S.No.114 of 2016 on the file of the Additional District Munsif Court, Ambasamudram.

2. A reading of the affidavit filed by the revision petitioner shows that on 28.07.2016 when he was out of station the defendants had made an opening towards 1st schedule 2nd item of the suit property and erected a door with a frame. That illegal act was challenged by him by filing the suit. Only for the purpose of noting down physical features as to the existence of the openings of 1 schedule 2nd item of the suit property and erection of a door with frame, an application was filed for appointment of Advocate Commissioner.

3. The trial court has taken a view that the alleged opening can be identified by way of oral evidence and by producing photographs.



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When there is a contradictory view with regard to four boundaries, appointment of Commissioner will amount to collection of evidence.

To prove existence of four boundaries, production of rough sketch of the suit property would be sufficient. Appointment of Commissioner will not give any help to the trial court to render a finding on that aspect. By holding so, the trial court dismissed the application.

4. Since there is an allegation that the defendants have made an opening towards 2nd item of the 1st schedule of suit property and erected a door with a frame, unless an Advocate Commissioner is appointed, those structures will not be brought on record. Mere photographs cannot be equated with an Advocate Commissioner's report. If Advocate Commissioner is appointed, unnecessary oral and document evidence would be avoided and it will help the court to resolve the issue. So on that ground, the order passed by the trial court is set aside.



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There shall be a direction to the trial court to appoint a Advocate Commissioner, fix remuneration. The Commissioner shall visit the property in the presence of both parties and note down the physical features. The Commissioner shall file a report within the time to be stipulated by the Court.

5. With the above directions, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

12.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
CM

To

1. The Additional District Munsif Court, Ambasamudram.
2. The Section Officer, V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J.

CM

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