



C.R.P(MD)No.1 of 2015(PD)

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 02.02.2024

CORAM :

THE HONOURABLE Mr. JUSTICE C.KUMARAPPAN

**C.R.P.(MD)No.1 of 2015
and
M.P(MD)No.1 of 2015**

Pechammai

... Petitioner/Petitioner/
Plaintiff

Vs.

1.Rengasamy
2.Sureshmuthu
3.Muthukumar
4.Kasi
5.The Tahsildar,
Thiruppathur Taluk,
Thiruppathur,
Sivagangai District.

6.The District Collector,
Sivaganga District,
Sivaganga.

...Respondents/Respondents/
Defendants

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 15.09.2014 in I.A.No.211 of 2014 in O.S.No.62 of 2014 on the file of the District Munsif-cum-Judicial Magistrate, Thiruppathur.



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For Petitioner : M/s.R.Sundar Srinivasan
For R5 & R6 : M/s.A.K.Maickkam
Special Government Pleader
For R1 to R4 : No appearance

ORDER

The present Civil Revision Petition has been filed against the fair and decreetal order, dated 15.09.2014 passed in I.A.No.211 of 2014 in O.S.No.62 of 2014 by the District Munsif-cum-Judicial Magistrate, Thiruppathur.

2.The revision petitioner is the plaintiff and the respondents are the defendants in the suit before the trial Court.

3.For the sake of convenience, the parties will be referred to herein according to their litigative status as mentioned before the trial Court.

4.According to the plaintiff, he filed a suit in O.S.No.62 of 2014 before the District Munsif Cum Judicial Magistrate, Thiruppathur, for declaration to declare the suit schedule ABCDEF property as public pathway and consequently for mandatory injunction to remove the encroachments made



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in the above suit schedule property. During the pendency of the suit, the plaintiff filed I.A.No.211 of 2014 to appoint an Advocate Commissioner to measure the suit property and to note down the physical features and to file a report. The said I.A was dismissed by the trial Court. Aggrieved over the same, the plaintiff is before this Court.

5.The said petition was resisted by the respondents/defendants contending that there is no public passage and if at all the revenue record says that it is a public passage, it is beyond the power of the authority concerned. Therefore, the respondents pray to dismiss the said application.

6.The trial Court, having considered either side submission, has arrived at a conclusion that when the relief of declaration can be granted in respect of the public passage, the encroachment will be removed. Therefore, when declaration is sought for, the appointment of Advocate Commissioner is not necessary.

7.Heard the learned Special Government Pleader appearing for the fifth and sixth respondents.



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8.I have given by anxious consideration made by either side submission.

9.From the perusal of the records, the plaintiff has come forward with a specific prayer that the survey number in S.No.308-1, is a public passage. During the pendency of the said suit, the plaintiff has also filed an application in I.A.No.211 of 2014 for appointment of Advocate Commissioner so as to note down the physical features in order to find out the encroachment made in the said public passage.

10.As rightly contended by the learned Special Government Pleader, the moment the petitioner is able to get a decree in respect of declaration there will be judgment to remove the encroachment if any in S.No.308-1 as the suit property is within the specific boundary. This Court is in full agreement with the submission made by the learned Special Government Pleader and even the trial Court has rightly held that the moment declaratory decree is obtained by the plaintiff, the encroachment could be removed and at this stage, the question of removing the encroachment does not arise. Therefore, this Court could not find any perversity in the order passed by the trial Court.



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11.In the result, this Court does not want to interfere with the order of

the trial Court. Hence, this Civil Revision Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

02.02.2024

NCC:Yes/No

Index:Yes/No

Internet:Yes/No

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To

1.The District Munsif-cum-Judicial Magistrate,
Thiruppathur.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.
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