



C.R.P.(MD)No.2447 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 21.08.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.2447 of 2023

and

C.M.P.(MD)No.12745 of 2023

Annalagraharam Panchayat,
Represented by its President,
Annalagraharam Panchayat Union Office,
Annalagraharam Village,
Kumbakonam Taluk.

... Petitioner/Petitioner/Plaintiff

Vs.

1.G.Padmapriya

2.B.Paripoorana Anandam

3.Rajeswari

... Respondents/Respondents/Defendants

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the Fair and Decretal Order passed in I.A.No.229 of 2023 in O.S.No.294 of 2014 dated 28-06-2023 on the file of Principal District Munsif Court, Kumbakonam and set aside the same.

For Petitioner : Mr.K.Balasubramani

For Respondents : Mr.M.P.Senthil for R1 & R2.
Mr.S.Sankar for R3.

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ORDER

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Heard the learned counsel on either side.

2.The civil revision petition is directed against the dismissal of I.A.No.229 of 2023 filed by the petitioner for appointment of advocate commissioner. The revision petitioner is the plaintiff in O.S.No.294 of 2014 on the file of the District Munsif Court, Kumbakonam. The suit was for permanent injunction to restrain the defendants from interfering with the right of the local body to lay road on the suit property. The petitioner had earlier filed I.A.No.83 of 2019 for appointing an advocate commissioner. When the I.A. was taken up for disposal, the original defendants (D1 and D2) submitted before the Court below that they have not made any obstruction and that they have no objection for laying the road. In that view of the matter, I.A.No.83 of 2019 filed for appointment of advocate commissioner was dismissed 28.06.2019.

3.The present I.A.No.229 of 2023 is also for the very same relief. But then, the dismissal of earlier I.A. may not really come in the way. This is for two reasons. Dismissal of an I.A. cannot operate as *res judicata*. That apart, one Rajeswari was impleaded as the third defendant in the suit in the year 2022.



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While the defendants 1 and 2 are on the same page as that of the plaintiff, the third defendant is contending that the suit property belongs to her. The learned counsel for the petitioner would submit that therefore, appointment of advocate commissioner is necessary to measure the width of the road.

4.I am not able to understand the logic behind the institution of the suit itself. The revision petitioner is not a private individual. It is the local body. It has got statutory power under the relevant provision of Tamil Nadu Panchayats Act, 1994 to lay a road. Section 131 of the Act states that no person can encroach or commit obstruction in or over public road. If that be so, the local body can call upon the encroacher to remove the encroachment. If it is not complied with, action can very well be taken under the Tamil Nadu Land Encroachment Act, 1905. If requisition is made by the local body, the jurisdictional Tashildar is obliged to act thereon. In such an event, it is the third respondent who should have rushed to the Court. The local body need not wring its hands in despair. More than anything else, the suit has been filed only for the relief of permanent injunction. The petitioner has not sought the relief of declaration. An advocate commissioner cannot be appointed for the purpose of gathering evidence or to find out that if the third defendant has committed encroachment.



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5. In this view of the matter, I decline to interfere. There is no merit in this civil revision petition and it stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

21.08.2024

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

The Principal District Munsif Court,
Kumbakonam.



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G.R.SWAMINATHAN, J.

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