



C.R.P.(PD)(MD).No.2643 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD)No.2643 of 2018

and

C.M.P(MD) No.11573 of 2018

R.Thangapandi

... Petitioner/2nd Respondent/
2nd Defendant

-vs-

1.A.Ramasamy

... 1st Respondent/Petitioner/
Plaintiff

2. R.Palpandi

3. R.Muthuchamy

4. R.Jayabal

... Respondents 2 to 4/
Respondents 1, 3 and 4/
Defendants 1, 3 and 4

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 31.07.2018 passed in I.A.No.879 of 2017 in O.S.No.100 of 2017 on the file of the District Munsif Court, Virudhunagar has to be set aside.

For Petitioner : Mr.M.Kannan

For Respondents : Mr.M.Ashokkumar – for R1
: No appearance – for R2 to R4



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ORDER

The second defendant, in O.S.No.100 of 2017 on the file of the District Munsif Court, Virudhunagar, is the revision petitioner.

2. The first respondent herein as the plaintiff had filed O.S.No.100 of 2017 for the relief of permanent injunction as against the defendants directing them not to disturb his pathway rights by putting up construction in the suit schedule property. Pending suit, the plaintiff had filed I.A.No.879 of 2017 for appointment of an Advocate Commissioner to note down the physical features of the property along with the sketch. This application came to be resisted by the defendants on the ground that the suit schedule property absolutely belongs to them and the plaintiff has not properly identified the suit schedule property. The defendants have further contended that the plaintiff is attempting to collect evidence by appointment of an Advocate Commissioner. The trial Court, after considering the submissions made on either side has allowed the application on the ground that since the issue in suit relates to pathway rights and alleged constructions made in the pathway, appointment of an Advocate Commissioner is essential. Challenging the same, the present Civil Revision Petition has been filed.



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3. The learned counsel appearing for the revision petitioner had relied upon the schedule of property in the plaint and had contended that four boundaries have not been mentioned in the suit schedule property and therefore, it is clear that the plaintiff is attempting to collect evidence relating to the four boundaries of the suit schedule property by appointment of an Advocate Commissioner. This is not permissible under law. He further contended that the property in dispute being absolute property of the second defendant, is not necessary to measure the suit schedule property as it is a pathway. Hence, he prayed for allowing this Revision Petition.

4. Per contra, the learned counsel appearing for the first respondent/plaintiff had contended that the defence of the defendants in the written statement need not be considered at this relevant point of time. The burden of proof is on the plaintiff to establish that there is a pathway. If the defendants have got any objections relating to the Commissioner's Report, he can file his objections after the report is filed.

5. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

6. The primary objection on the part of the revision petitioner is that



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without any four boundaries in the suit schedule property, the plaintiff is attempting to collect evidence by appointment of an Advocate Commissioner. It is true that the four boundaries has not been mentioned in the suit schedule property. The Advocate Commissioner shall strictly adhere to the schedule of property as found in the suit and if it is possible, he can identify the property with the help of the Surveyor appointed by the Court. Any objections by the defendants shall also be taken into consideration, at the time of inspection and survey.

7. With the above said observations, this Court finds that the appointment of an Advocate Commissioner is very essential, and there are no merits in the revision petition. Accordingly, this Civil Revision Petition is disposed of. Considering the fact that the suit is pending from the year 2017, the District Munsif Court, Virudhunagar is directed to dispose of the suit in O.S.No.100 of 2017 on or before **31.08.2024**. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

04.04.2024

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



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To
1. The District Munsif Court,
Virudhunagar.



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R.VIJAYAKUMAR,J.

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