



C.R.P(MD)No.3392 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.11.2024**

CORAM

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.3392 of 2023
and
C.M.P(MD)No.17512 of 2023

Gunaseelan

... Petitioner

Vs.

1.Kulanthairaj

2.John Boseko

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed by the Principal District Munsif Court, Dindigul, Dindigul District in I.A.No.322 of 2023 in O.S.No.113 of 2023 on 12.09.2023 and allow this Civil Revision Petition.

For Petitioner : Mr.M.Jothi Basu

For Respondents : Mr.J.Lawrance

ORDER

By consent of both parties, the present revision petition is taken up for final disposal today. The revision petitioner aggrieved by the order passed in I.A.No.322 of 2023 in O.S.No.113 of 2023, dated 12.09.2023 on the file of the learned Principal District Munsif Court, Dindigul has preferred the present revision petition.



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2.The facts and circumstances of the case which leads to filing of this revision petition as follows:-

The revision petitioner as the plaintiff filed the above suit in O.S.No.113 of 2023 for declaration and permanent injunction. The case of the plaintiff is that the suit property is a pathway situated in new Town survey No.61/ 1A1, T.S.No.1656/1, Round Road, ward No.16, Dindigul Town, Balakrishnapuram Village, Dindigul East Sub Register No.I, Dindigul, belongs to the petitioner and three others. The defendants who are the brothers of the petitioner are disputing the title of the plaintiff in the suit property and trying to put up the construction in the same. Hence, the petitioner was constrained to file the above suit in O.S.No.113 of 2023.

3.Pending suit, the petitioner has filed an application for appointment of Advocate Commissioner in I.A.No.322 of 2023 and the same was resisted on the side of the respondent. However, the trial Court has dismissed the said application by stating that the suit pathway as per Ex.R.1 and Ex.R2 decree belong to the Corporation and therefore, there is no necessity for appointment of Advocate Commissioner.



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4.The learned counsel appearing for the petitioner would submit that the petitioner/plaintiff in the above petition sought for appointment of Advocate Commissioner by stating that the suit pathway belongs to the petitioner/plaintiff, while so, the second respondent is attempting to construct the house by facing the suit pathway whereby the road is situated in the western side of the second respondent house and apart from that there is sufficient space for the second respondent to have an entrance to his house. While so, in order to grab the property of the petitioner, the second respondent/defendant has attempted to construct the house facing the suit pathway. Hence, it is necessary to appoint the Advocate Commissioner to note down the physical features of the suit property and measure the same with the help of Surveyor and Village Administrative Officer which would be helpful for the Court to resolve the dispute.

5.On the other hand, the learned Counsel appearing for the respondents/defendants submitted that the suit pathway belongs to the Corporation and therefore, the trial Court has rightly dismissed the application filed by the petitioner which calls for no interference.



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6.Heard both sides and perused the materials available on record.

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7.In the plaint, it is specifically pleaded that the suit pathway belongs to the petitioner/plaintiff and there are sufficient evidence to establish that the same belongs to the petitioner/plaintiff. While so, the second respondent is trying to construct the house facing the suit pathway in spite of the fact that the respondent is having the road on the western side of the suit property and therefore, the petitioner claims that by noting down the physical features of the suit property and by measuring the same with the help of Surveyor in the presence of Village Administrative Officer, the issue in dispute can be resolved.

8.Considering the above facts and circumstances of the case, no prejudice would be caused to the other side, by appointing the Advocate Commissioner to note down the physical features of the suit property and measure the same with the help of Surveyor in the presence of Village Administrative Officer. On the other hand, it would be helpful to the Court to decide the question in dispute. Moreover an Advocate Commissioner cannot be appointed for collecting the evidence and find out who is in possession of the property, which is not in the case on hand.



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9.In the present case, the petitioner seeks for appointment of Advocate Commissioner to localise the physical feature and to measure the property. While so, the trial Court ought to have allowed the said petition.

10.In view of the above facts, the impugned order passed by the Trial Court is set aside. The Trial Court is directed to appoint an Advocate Commissioner for noting down the physical features of the suit property and measure the same within the aid of qualified Surveyor also direct the Advocate Commissioner to file his report, within a period of two (2) weeks from the date of receipt of a copy of this order and also to dispose the suit as early as possible.

11.Accordingly, this Civil Revision Petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

08.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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K.GOVINDARAJAN THILAKAVADI, J.

BTR

To

The Principal District Munsif Court, Dindigul,
Dindigul District.

Order made in
C.R.P(MD)No.3392 of 2023

08.11.2024