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C.R.P. (PD) .No.5284 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.5284 of 2024
and C.M.P.No.29498 of 2024

Thangavel

.. Petitioner

Vs.

1.Mariappan

2.Mariappan

3.Lakshmi

4.Ramasamy

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the docket order dated 24.08.2024 passed in I.A.No.2 of 2024 in O.S.No.26 of 2024 on the file of the District Munsif Cum Judicial Magistrate, Edappadi.

For Petitioner : Mr.R.Ezhilarasan

ORDER

This civil revision petition challenges the order passed by the learned



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District Munsif Cum Judicial Magistrate, Edappadi, in I.A.No.2 of 2024 in

O.S.No.26 of 2024 dated 24.08.2024.

2.The petitioner is the 3rd defendant in the suit. The 1st respondent filed O.S.No.26 of 2024 for the following relief:

“To restrain the defendants and their men, agent from in any way and in any manner not to disturb the plaintiff's peaceful possession and enjoyment of the suit property by way of permanent injunction.”

3.It is the case of the plaintiff that he had purchased a property from one S.P.Sengottuvelan, by way of sale deed dated 31.03.1999. He pleaded that, on and from the date of the sale, he has become the absolute owner of the property. His claim is that the defendants, who are his neighbours, had been pressuring him to sell the property at a low price and he had refused the said offer. Angered by this refusal, they have taken steps to encroach upon the property of the plaintiff. In pursuance thereof, they had also removed the boundary stones that separated the plaintiff's property from the defendants.



Hence, the suit.

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4. Even while presenting the plaint, he pleaded that if a Commissioner is appointed to fix the boundary stones with the help of a qualified Surveyor and Village Administrative Officer, it will assist the Court in rendering the correct judgment.

5. On the basis of these pleadings, he took an application for appointment of an Advocate Commissioner for the said relief. This application was received as I.A.No.2 of 2024. Notice was ordered to the defendants.

6. The defendants, *inter alia*, filed a counter pleading that the pleading of the plaintiff that the defendants try to dispossess him is a false story and are created in order to get a wrongful gain. The defendants further pleaded they had put up a construction in the form of a bathroom for their family's convenience. They urged that this construction is on the north eastern portion of their property and has nothing to do with the property of the plaintiff. They



added that the report of an Advocate Commissioner is only to create an evidence in the suit and if a report is submitted, it might result in eviction of the defendants from the suit property.

7.The learned Trial Judge took up the application for disposal. He perused the affidavit and petition and came to a conclusion that if an Advocate Commissioner visits the suit property and submits a report, no prejudice would be caused to the defendants. Apart from that, he came to a categorical conclusion that the plan and report of the Advocate Commissioner together with the report of the revenue officials will be helpful in adjudicating the matter further. Challenging the same, the present revision.

8.Mr.R.Ezhilarasan urged that being a suit for injunction, an Advocate Commissioner ought not to have been appointed by the Court. He points out that the allegations that have been made against the defendants are false and no reason has been adduced by the learned Judge for appointing the Advocate Commissioner.



9.I have carefully considered the submissions of Mr.R.Ezhilarasan.

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10.The entire case of the plaintiff is that he is in possession of the suit schedule mentioned property, pursuant to a purchase made by him in the year 1999. He has given a specific extent, in which he is allegedly in occupation. Though he had sought for an Advocate Commissioner to measure the property and fix the boundary stones, the learned District Munsif Cum Judicial Magistrate, Edappadi, has been cautious enough not to grant the relief as prayed for. He has only directed the Advocate Commissioner to measure the suit property, as per the entries in the documents and the revenue records, with the help of a qualified surveyor.

11.If the case of the defendants is that they have constructed a bathroom only in their portion of the land and have not encroached upon the plaintiff's land, they have nothing to fear. The plaintiff alleges that the defendants are attempting to encroach on the property after removing the boundary stones. In such a suit, if a report of an Advocate Commissioner is before the Court, it will certainly assist the Court in rendering a fair verdict.



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12. In any event, appointment of an Advocate Commissioner is an exercise of a discretion by the learned Trial Judge. Unless and until, the discretion has been exercised in a capricious or in an arbitrary manner, seldom should this Court interfere with the such orders, in exercise of the revisional powers. The learned Trial Judge, who is the master of the suit, felt that if the report of the revenue officials and Advocate Commissioner comes on record, it would assist him in adjudicating the matter further. As it is subjective satisfaction based on objective criteria, I am not inclined to revise the order.

13. It is left open to the defendants to issue such memo of instructions, as they desire, to the Commissioner at the time of the visit. I am certain if such instructions are given together with documents, the Commissioner will certainly take into consideration the said objections.

14. Mr. R. Ezhilarasan states that the Advocate Commissioner has not executed the warrant. Though the order has been made in August, 2024, it is



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unfortunate that the warrant has not yet been executed. The learned District Munsif Cum Judicial Magistrate, Edappadi, shall ensure that the warrant is executed by the Commissioner appointed by him. In case, the Commissioner does not do so, the learned Judge shall recall the warrant and issue a warrant to an other Advocate Commissioner and give appropriate directions to complete the survey at the earliest. In such eventuality, the learned Judge shall also ensure that the Advocate Commissioner appointed under the order dated 24.08.2024 does not retain the benefits that has accrued to him.

15.In the result, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The District Munsif Cum Judicial Magistrate,
Edappadi.

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V.LAKSHMINARAYANAN, J.

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