



C.R.P.(PD)(MD).No.1745 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.02.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD).No.1745 of 2022
and CMP(MD).No.7651 of 2022

Syed Saleem

... Petitioner

-VS-

1.Chelladurai

2.Kanthiah

3.Pooliah

4.Kalep Pandiyan

...Respondents

PRAYER: The Civil Revision Petition has been filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 05.10.2021 passed in I.A.No.69 of 2016 in A.S.No.41 of 2015 on the file of the Subordinate Judge, Kovilpatti.

For Petitioner : Mr.S.Pon Senthil Kumaran

For Respondent : Mr.C.Senthilmurugan for R4

: No appearance for R1 to R3



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ORDER

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The appellant in A.S.No.41 of 2015 on the file of the Subordinate Court, Kovilpatti is the revision petitioner.

2.The revision petitioner herein as plaintiff has filed O.S.No.94 of 2012 on the file of the District Munsif Court, Kovilpatti for the relief of permanent injunction for four items of property. The suit was dismissed by the trial Court on the ground that the plaintiff has not established his possession over any of the items. Challenging the same, the revision petitioner has filed A.S.No.41 of 2015 before the Sub Court, Kovilpatti.

3.Pending first appeal, the revision petitioner as appellant had filed I.A.No.69 of 2016 for appointment of advocate commissioner to note down the fact that the defendants are having pathway rights not in S.No.311 but in S.No.312. This application was resisted by the respondents.

4.The trial Court after considering the submissions, found that in a suit for bare injunction the appointment of the advocate commissioner is wholly unjustifiable. Challenging the same, the present revision petition has been filed.



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5.The learned counsel for the revision petitioner had contended that the trial Court has arrived at a finding in paragraph No.13 of the judgment to the effect that the defendants are claiming pathway rights over S.No.311. Therefore, the plaintiff would like to establish it before the Appellate Court that the defendants do not have any pathway rights over S.No.311, but they are having their rights only over S.No.312. Hence, the commissioner has to be appointed.

6.Per contra, the learned counsel for the respondents had contended that it is for the plaintiff to establish his possession over S.No.311 to get a decree. The defence taken by the defendants cannot be a ground for appointment of Advocate Commissioner.

7.I have considered the submissions made on either side and perused the material records.

8.The facts captured above will clearly indicate that the trial Court had dismissed the suit filed by the plaintiff seeking permanent injunction primarily on the ground that the plaintiff has not established his possession over all the four items of the suit schedule properties on the date of filing of the suit. Whether the defendants claims a right of pathway over S.Nos.311 and 312 will not alter the burden of proof over the plaintiff



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to establish his claim. In such circumstances, the appointment of the advocate commissioner to find out whether the defendants are having pathway right over S.No.311 is wholly unnecessary for adjudicating the dispute between the parties. The First Appellate Court has rightly dismissed the application.

9.In view of the above said deliberations, there are no merits in the revision petition. This Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

05.02.2025

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

To

- 1.The Subordinate Judge, Kovilpatti.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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