



C.R.P(MD)No.1741 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 09.01.2025
DELIVERED ON : 23.01.2025

CORAM:

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.1741 of 2022
and
C.M.P(MD)No.7642 of 2022

Pushparani

... Petitioner

Vs.

Chithra

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 01.04.2021 passed in I.A.No.3 of 2019 in O.S.No.90 of 2019 on the file of the Additional District Munsif Court, Padmanabhapuram and to allow this civil revision petition and to pass such further or other order as this Court.

For Petitioner : Mr.G.Sridharan

For Respondent : No appearance



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ORDER

This Civil Revision Petition is preferred against the order passed in I.A.No.3 of 2019 in O.S.No.90 of 2019 on the file of the Additional District Munsif Court, Padmanabhapuram.

2. The revision petitioner is the defendant in the above suit. The respondent as plaintiff filed the suit in O.S.No.90 of 2019 for a decree of permanent injunction restraining the defendant from trespassing into the suit property and commit any damages and from putting waste materials and prevent him from causing nuisance to the plaintiff's peaceful possession in the suit property. Pending suit, the defendant filed an application for appointment of Advocate Commissioner stating that an extent of two and a half cents in Resurvey No.261/16 belongs to the husband of the petitioner / plaintiff and that the same is used as pathway to reach the house of the petitioner's husband. It is also stated that the electric line is passing through the suit property. While so, on 27.12.2018, the respondent's husband and other persons tried to remove the electric post from the suit property and attempted to close the pathway existing in the suit property from time



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immemorial. Hence, it has become necessary to note down the physical features in the suit property and the existence of power line running through the suit property to the petitioner's husband house and about the erection of two pillars in the suit property. The respondent / plaintiff resisted the said application stating; that Resurvey No.261/16 belongs to the respondent / plaintiff; that, the said property is not a pathway; that, the petitioner / defendant has trespassed into the property; that the service connection is not running through the suit property. The further submission is that the suit property was purchased by the respondent / plaintiff on 30.03.2010 and the same was enjoyed by the plaintiff without any interruption. Therefore, there is no necessity for appointment of Advocate Commissioner. However, the Trial Court dismissed the said application stating that Advocate Commissioner cannot be appointed to collect evidence. Assailing the said order, the present revision is preferred.

3. The learned Counsel appearing for the revision petitioner / defendant would submit that there is a pathway in the suit property from time immemorial and the same was used by the defendant and the report of the Advocate Commissioner noting down the physical features of the



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property would assist the Court to resolve the dispute between the properties. However, the Trial Court erroneously dismissed the application stating that the defendant has not claimed any right over the suit property and therefore, the said application is only an attempt to collect evidence. Such finding of the Trial Court is erroneous and un-sustainable and requires interference by this Court.

4. Despite notice being served, no representation on the side of the respondent.

5. Heard the learned Counsel for the petitioner and perused the materials available on record.

6. The revision petitioner / defendant sought for appointment of Advocate Commissioner to note down the physical features of the suit property and the existence of a pathway in the suit property. The same is resisted on the side of the respondent / plaintiff that the disputed property is not a pathway and that the revision petitioner / defendant has trespassed into the property and therefore, petition for appointment of Advocate



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Commissioner is allowed, it amounts to collection of evidence. If Advocate Commissioner is appointed to note down the physical features of the property concerned, the same would indirectly serve the purpose as to whether the property in dispute is used as a pathway or not. It is for the revision petitioner / defendant to prove his right of enjoyment of the disputed property as a pathway or not would be the different cause that cannot be equated in the name of appointment of Advocate Commissioner. If at all the property in dispute is used as pathway by the petitioner / defendant, it is for the defendant to prove. This factor cannot be proved by way of appointing Advocate Commissioner. The Trial Court has rightly dismissed the said application which calls for no interference by this Court.

7. In the result, the present revision petition is dismissed as devoid of merits. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

23.01.2025

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



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To
The Additional District Munsif Court,
Padmanabhapuram.



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K.GOVINDARAJAN THILAKAVADI, J.

BTR

Order made in
C.R.P(MD)No.1741 of 2022

23.01.2025