

C.R.P(MD)No.1446 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.06.2026

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THE HON'BLE MR. JUSTICE S.SOUNTHAR

C.R.P.(MD)No.1446 of 2023

and

C.M.P(MD)No.7227 of 2023

A.Irudhayaraj

.. Petitioner

Vs.

Madan Selvaraj

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 11.07.2022 made in I.A.No.1 of 2021 in O.S.No.12 of 2021 on the file of the District Munsif, Nilakottai.

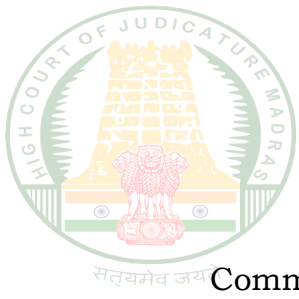
For Petitioner : Mr.M.Viji

For Respondent : No appearance

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ORDER

This Civil Revision Petition has been filed challenging the order passed by the trial Court dismissing the application filed by the petitioner/defendant seeking appointment of an Advocate



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Commissioner to measure the suit property and note down the alleged excess construction put up by the petitioner.

2. The respondent/plaintiff instituted the suit seeking the relief of bare injunction restraining the petitioner/defendant from interfering with his peaceful possession and enjoyment of the suit property.

3. It is not in dispute that there was a construction agreement between the respondent and the petitioner, under which the petitioner agreed to put up construction in the respondent's property. According to the respondent, the petitioner completed the construction and handed over possession of the building, pursuant to which the respondent performed the house-warming ceremony on 10.02.2020. Thereafter, the petitioner allegedly demanded additional amounts from the respondent on the ground that he had put up certain excess construction beyond the agreed specifications. It is the further case of the respondent that, on account of such demand, the petitioner attempted to interfere with his peaceful possession and enjoyment of the suit property. Hence, the respondent was constrained to institute the present suit for bare injunction.



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4. The said suit was resisted by the petitioner mainly on the ground that he had put excess construction and hence, the respondent was legally bound to pay cost for the excess construction to the petitioner. The petitioner has not raised any counter claim in the written statement.

5. During the pendency of the suit, the petitioner filed the present application seeking appointment of an Advocate Commissioner to measure the suit property and note down the alleged excess construction put up by him. The said application was dismissed by the trial court. Aggrieved by the same, the petitioner has come before this court.

6. The learned counsel for the petitioner would submit that if the Advocate Commissioner is appointed for local inspection of the suit property, he can easily find out the excess construction made by the petitioner and the same would be helpful to decide the dispute involved in the matter.

7. The suit is for bare injunction. The principal issue that arises for consideration is whether the respondent/plaintiff is in lawful possession of the suit property and whether he is entitled to the relief of injunction as prayed for. The questions as to whether the petitioner



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had carried out any excess construction and whether the respondent is liable to pay the cost of such alleged excess construction are wholly foreign to the issues involved in the suit. Though the petitioner has raised a plea in the written statement regarding the alleged excess construction, he has not chosen to make any counterclaim seeking recovery of the alleged additional cost incurred by him.

8.In such circumstances, there is no necessity to note down the physical features and excess construction put up by the petitioner in the suit property in a suit for bare injunction filed by the respondent. The trial Court appreciated the said position and dismissed the application for appointment of Advocate Commissioner. I do not find any illegality or irregularity in the order passed by the trial Court warranting interference by this court.

9.Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

29.06.2026

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



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To

- 1.The Sub Court, Uthamapalayam.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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