



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2018

CORAM :

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THE HONOURABLE MRS. JUSTICE S. RAMATHILAGAM

C.R.P. (PD) (MD) No. 549 of 2011

and

MP (MD) No. 1 of 2011

Pandiaraj

... Revision Petitioner/
Petitioner/1st Plaintiff

vs.

Mariammal

... Respondent/Respondent/
Defendant

PRAYER: Petition filed under Section 227 of Constitution of India, to call for the records in fair and executable order dated 22.11.2010 in I.A.No.850 of 2010 in O.S.No.269 of 2008 on the file of the District Munsif Court, Virudhunagar, and set aside the same thereby allow the I.A.No.850 of 2010 by allowing this Civil Revision Petition.

For Petitioner : Mr.K.Sekar

For Respondent : No Appearance

ORDER

The learned counsel for the Petitioner is present. There is no representation for the respondent.

2.This petition has been filed against the fair and decreetal order passed in I.A.No.850 of 2010 in O.S.No.269 of 2008. I.A.No.850 of 2010 was filed by the first plaintiff for appointment of Commissioner to measure the suit property along with Surveyor and to file a report.

3.On perusal of records, it is observed that the suit is filed by the plaintiff for declaring that the "A" schedule property belongs to the plaintiff absolutely and also for the relief of injunction restraining the defendant and his men from constructing a building in the "A" schedule property and also for permanent injunction restraining the defendant and his men from interfering with the petitioner/plaintiff in the usage of "C" schedule property. The Commissioner application was filed by the plaintiffs and the case was posted for cross examination of the defendant and after giving four adjournments the defendant was not



4.The case of the plaintiffs is that there is an interference caused by the defendant by putting fence in the "C" schedule property and the usage of the pathway is completely obstructed by the defendant. Hence, for that purpose the plaintiff has filed the said Interlocutory Application.

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5.It is also observed that the plaintiff has sought for the relief of declaring him as owner of the "A" schedule property. After examination of the defendant, this Commissioner application has been filed by the plaintiff for the appointment of Commissioner for noting the obstruction caused by the defendant by constructing a fence which has been put up in the "C" scheduled pathway by the defendant. This is totally different from the relief and the property also differs from the one over which the plaintiff already claims the relief. Hence, the purpose of filing the Commissioner application is no way related to the relief sought for by the plaintiff. Hence, that petition was dismissed.

6.This Court after verifying the relief sought for by the plaintiff and the plaint and the stage of the case, is of the opinion that the purpose of filing the Commissioner application is no way connected with the decision to be arrived at with regard to the relief sought by the plaintiff. This application is filed at the belated stage. The Civil Revision Petition is also pending for a long time, after obtaining interim stay in the year 2011.

7.Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

8.Considering the fact that the suit is of the year 2008, the Trial Court is directed to dispose the suit within four months from the date of receipt of copy of this order.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

1.The District Munsif
Virudhunagar.

2.The Record Keeper, V.R.Section, (2copies)
Madurai Bench of Madras High Court, Madurai.

+One cc to Mr.K.Sekar, Advocate, SR.No.44427



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