



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2021

CORAM

WEB COPY

THE HONOURABLE **MRS.JUSTICE J.NISHA BANU**

C.R.P. (MD)No.1328 of 2019

and

C.M.P. (MD)No.7230 of 2019

Subbiah

... Petitioner/Petitioner/Plaintiff

Vs.

Thambiraja

... Respondent/Respondent/Defendant

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed by the learned District Munsif, Devakottai in I.A.No.4 of 2019 in O.S.No.4 of 2015 dated 11.07.2019.

For Petitioner

: Mr.B.Pravin Kumar

ORDER

This civil revision petition has been filed to set aside the order passed by the learned District Munsif, Devakottai in I.A.No.4 of 2019 in O.S.No.4 of 2015 dated 11.07.2019.

2.The brief facts of the case is that the petitioner herein filed a suit in O.S.No.4 of 2015 for declaration declaring that the suit property is belonging to the petitioner and for permanent injunction restraining the respondent herein from interfering in the peaceful possession and enjoyment of the property. During pendency of the above suit, the petitioner filed an interlocutory application in I.A.No.4 of 2019 in O.S.No.4 of 2015 for appointment of Advocate Commissioner to measure the suit property with the help of the surveyor. The said petition was dismissed by the Court below. Aggrieved over the same, the petitioner filed the present civil revision petition.

3.The learned counsel for the petitioner would submit that the Court below erred in holding that there is no dispute regarding the physical features of the property and erred to note that the respondent has denied the very existence of the house of the petitioner in the suit property. Hence, the petitioner filed the present petition seeking the aforesaid relief.



4.Heard the learned counsel for the petitioner and perused the materials available on record.

5.Admittedly, the suit is filed for declaration and the petitioner has to prove his case by way of trial only. As found by the learned Judge that the dispute is only in respect of sub division and right over the property. The existence or non-existence of the building in the suit property will not affect the case of the petitioner and therefore, the learned Judge has rightly dismissed the application where I do not find any infirmity and interference of this Court is not warranted. Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gns

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The District Munsif, Devakottai.

+1 CC to Mr.BABU RAJENDRAN, Advocate (SR-5864[F] dated 18/02/2021)

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