



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 29.11.2021**

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P (PD) (MD) No.1875 of 2021

and

C.M.P(MD) No.10053 of 2021

Gunasekaran Ponmani

... Petitioner

Vs.

Senthil Raja

... Respondent

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, to revise the order of the learned District Munsif cum Judicial Magistrate, Radhapuram, Tirunelveli District dated 21.09.2021 made in I.A.No.1 of 2020 in O.S.No.114 of 2020 forthwith.

For Petitioner

: Mr.S.Palani Velayutham

ORDER

This civil revision petition is filed by the defendant in the suit in O.S.No.114 of 2020 challenging the order passed in I.A.No.01 of 2020 in and by which the learned District Munsif cum Judicial Magistrate, Radhapuram had appointed an Advocate Commissioner to measure the suit property and submit his report.

2.The only ground on which the revision has been moved is that the appointment of Advocate Commissioner to measure the property of the defendant along with suit property, is against the law. The respondent/plaintiff has filed a suit in O.S.No.114 of 2020 for a declaration, mandatory injunction directing the defendant to remove the fencing put up in the second item of the suit property and hand over the property to the plaintiff and also for an injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the property by the plaintiff. Pending the suit, an application was filed for appointing an Advocate Commissioner to note down the physical features of the suit property and to measure the same with the help of a Taluk Surveyor. The suit scheduled property consisted of three items of properties. The second item of property is the portion, which according to the plaintiff, had been encroached by the defendant.

3.The defendant had objected to the same contending that the suit second item of property was nothing, but a figment of the fertile imagination of the plaintiff.



4.The learned District Munsif had observed that Advocate Commissioner was necessary to note down the encroachment made in the second item of the suit schedule property and ultimately an Advocate Commissioner was appointed to inspect the suit property and submit his report. It is this order that is subject matter of challenge before this Court.

5.Heard the learned counsel for the petitioner and perused the grounds of challenge.

6.Considering the fact that the Advocate Commissioner has been appointed only to inspect the suit property and submit his report, the averment made by the defendant/revision petitioner herein that the Advocate Commissioner has been appointed to measure and note down the physical feature of his property appears, on the face of it, to be erroneous. Considering the fact that this is the only objection that has been raised and no serious objection has been made by the revision petitioner challenging the orders of the learned District Munsif cum Judicial Magistrate, Radhapuram, Tirunelveli District in I.A.No.01 of 2020 in O.S.No.114 of 2020, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 cum Judicial Magistrate,
Radhapuram,
Tirunelveli District.

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MGJ(21.12.2021) 2P 2C