



CRP.(PD)No.1343/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2022

CORAM:

Mr. JUSTICE N.SESHASAYEE

CRP.(PD)No.1343 of 2022
and C.M.P.No.7044 of 2022

A.SULOCHANA (deceased)

1.A.KANNAN,
2.A.PRABHU,

... Petitioners

Vs.

V.Kaviraj

... Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order of the learned II Additional District Munsif, Coimbatore in I.A.No.2 of 2019 in O.S.No.2133 of 2009 dated 07.01.2022.

For Petitioner : Mr.M.Sridhar

ORDER

The revision petitioner herein is a defendant who defends a Suit interalia for a mandatory injunction to remove certain structure which the plaintiff alleges



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that the defendant has put up in his property. Earlier, the trial Court has appointed an commission at the instance of the plaintiff, who has measured the property of the plaintiff and noted certain physical features and had filed a report. Now, after the conclusion of the trial, the defendant has come out with I.A.No.2 of 2019 for appointing a commission for local inspection interalia for measuring his property etc., this has been dismissed by the trial Court. One of the reasons advert to by the trial Court is that the Suit is laid in 2012 and the defendant has come out with this Application virtually to delay the final adjudication of the case. This is now under challenge.

2.In as much as the Suit is laid for mandatory injunction, the initial burden is on the plaintiff to prove that the defendant has encroached in his property and put up a structure. Here, measuring the property of the defendant may not matter much, however, this is an aspect which has to be considered by the trial Court when it proceeds to adjudicate the Suit before it. For the present, this Court finds merit in the line of reasoning of the trial Court and chooses not to interfere with it.



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3.Learned counsel for the revision petitioner made a fervent plea that if an opportunity is not given to the defendant then it may deny him an opportunity to produce an independent evidence before the Court.

4.As outlined earlier, the burden of proof is essentially on the plaintiff. If however, the defendant suffers a decree owing to an absence of a commissioner's report on facts such as one, he now requires to be noted down by a commission, then it can as well be raised as a ground in his memorandum of appeal, in the eventuality of the defendant preferring an appeal. If any such eventuality visits the defendant, then such Appellate Court which may consider any such ground, will be free to decide the issue and influence by the present order.

5.Subject to the above observation, this Civil Revision Petition is dismissed at the admission stage itself. Consequently, the connected C.M.P.No.7044 of 2022 is also dismissed. No costs.

27.04.2022

kas/dk



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N.SESHASAYEE, J.,

kas/dk

To

The II Additional District Munsif,
Coimbatore.

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