



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2022

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) No.1072 of 2021

and

C.M.P. (MD) No.6242 of 2021

1.K.Jyothi prabhakaran

2.K.Thiyagarajan

...Revision petitioners/Petitioners/
Petitioners/Defendants

Vs.

P.Mathish

...Respondent/Respondent/Respondent/
Plaintiff

PRAYER: Civil Revision Petition under Article 227 of the Constitution of India, to call for the records and set aside the order, dated 22.02.2021 in the application in I.A.No.2 of 2020 in I.A.No.937 of 2016 in O.S.No.294 of 2016 by the learned District Munsif Cum Judicial Magistrate-I, Srivilliputhur.

For Petitioner :Mr.V.S.Karthi, for
M/s.VS.Karthi Associates

ORDER

This Civil Revision Petition has been filed to set aside the order, dated 22.02.2021 in I.A.No.2 of 2020 in I.A.No.937 of 2016 in O.S.No.294 of 2016 passed by the learned District Munsif Cum Judicial Magistrate-I, Srivilliputhur.

2.The parties are referred to as per the rank mentioned before the Court below.

3.The plaintiff has filed a suit in O.S.No.294 of 2016 for declaration permanent injunction. The revision petitioners/defendants have filed a interlocutory petition in I.A.No.2 of 2020 in I.A.No.937 of 2016 in O.S.No.294 of 2016, under Order 26 Rule 9 & 10 to remit back the Advocate commissioner warrant. The said petition was dismissed on 22.02.2021. Aggrieved over the same, the revision petitioner is before this Court.

4.Heard the learned counsel appearing for the revision petitioners.

<https://hcservices.ecourts.gov.in/hcservices/>

5.This Civil Revision Petition is filed on the ground that the Court below ought to have allowed the I.A.No.2 of 2020 petition by



considering the importance in locating and fixing the suit property. The reasoning and conclusion given by the learned Magistrate is erroneous and the same is liable to be set aside by this Court under Section 115 of Civil Procedure Code.

6. The revision petitioners/defendants have filed this Civil Revision Petition to set aside the order, dated 22.02.2021 in I.A.No.2 of 2020 passed by the learned District Munsif Cum Judicial Magistrate-I, Srivilliputhur. The said petition was filed to remit back the same commissioner to inspect the suit property and also to measure the property in the point of 'C'.

7. The respondent/plaintiff has filed the suit in O.S.No.294 of 2016 for declaration and injunction regarding 2nd item of the property. In the written statement, the defendants have admitted that the title and possession and also stated in paragraph No.13 that they have no objection regarding item Nos.1 & 2 disputed properties. But, they have filed counter claim. The suit property is in Survey No.472/B2 including Survey No.1654/8 which was not at all disputed by the defendants. So, identity of property is not at all disputed. So, this Civil Revision Petition is liable to be dismissed.

8. Therefore, this Civil Revision Petition stands dismissed by confirming the order, dated 22.02.2021 in I.A.No.2 of 2020 in I.A.No.937 of 2016 in O.S.No.294 of 2016 passed by the learned District Munsif Cum Judicial Magistrate-I, Srivilliputhur. The learned Magistrate is directed to consider the matter without influencing the order passed in this Civil Revision Petition and also decide whether the Commissioner report is necessary to decide the issue. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ksa

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-I,
Srivilliputhur.

C.R.P. (MD) No.1072 of 2021

15.02.2022