



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :17.02.2022

CORAM:

THE HONOURABLE MRS. JUSTICE S.ANANTHI

C.R.P (MD) .No.1387 of 2021

and

C.M.P (MD) No.7853 of 2021

Esakki Mudaliyar

... Petitioner/ Respondent

Vs.

Balasubramanian

... Respondent/ Petitioner

PRAYER : This Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition with costs by setting aside the fair and decreetal order dated 03.03.2021 made in I.A.No.3 of 2021 in O.S.No.250 of 2015 on the file of the Additional District Munsif Court, Tenkasi and pass such further or other orders as this Hon'ble Court may deem fit and proper.

For Petitioner

: Mr.A.Sivaji

For Respondent

: Mr.T.S.R.Venkatraman

O R D E R

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 03.03.2021 made in I.A.No.3 of 2021 in O.S.No.250 of 2015 on the file of the Additional District Munsif Court, Tenkasi

2.The suit in O.S.No.250 of 2015 was filed by the respondent/plaintiff for declaration and permanent injunction and also mandatory injunction. The revision petitioner/defendant has filed a written statement and stated that only the respondent/plaintiff has encroached the property and he also left three feet on the eastern side of the plot of S.B. Point. Esakki Mudaliyar, who was examined as DW1 has stated in his evidence that he has not possession any land other than property stated in Ex.A1. So the respondent/plaintiff has filed an interlocutory petition in I.A.No.3 of 2021 under Order 26 Rule 9 and Section 151 of CPC., for appointing of Commissioner to measure the property after the suit was posted for argument.



3. Eventhough I.A.No.3 of 2021 was filed by the respondent/plaintiff belatedly, it is necessary to measure the property by the Commissioner. Now, pending this Civil Revision Petition, the Commissioner has also filed a report and plan. The learned counsel for the revision petitioner has stated that the Commissioner has measured the property without surveyor. If the revision petitioner wants to object the Commissioner's report and also wants re-issue to the Commissioner's warrant, he should have filed separate petition before the trial Court. So, the Commissioner is necessary to measure the property and find out the truth in this case and the learned Additional District Munsiff, Tenkasi has rightly allowed the said petition. Therefore, this court finds no valid reason to interfere with the order passed by the Court below.

4. In view of the above, this Civil Revision Petition stands dismissed by confirming the fair and decreetal order dated 03.03.2021 made in I.A.No.3 of 2021 in O.S.No.250 of 2015 on the file of the Additional District Munsif Court, Tenkasi. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsd

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 Additional District Munsif,
Tenkasi.

+1 CC to M/s.T.S.R.VENKAT RAMANA, Advocate (SR-7048[F] dated 18/02/2022)

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