



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.03.2022**

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P.(MD)No.585 of 2017

and

C.M.P(MD) No.2607 of 2017

WEB COPY

1.B.Vijaya

2.G.Rathakrishnan

... Petitioner

-vs-

1.D.Dhas

2.D.Packiyarethina Dhas

... Respondents

Prayer :- Petition filed under Article 227 of the Constitution of India, to set aside the order dated 09.01.2017 made in I.A.No.659 of 2014 in O.S.No.842 of 2014 on the file of the First Additional District Munsif, Tiruchirappalli and allow this civil revision petition.

For Petitioners

: Mr.G.Mohankumar

For Respondents

: Mr.B.Jameel Arasu

ORDER

This civil revision petition is filed challenging the order dated 09.01.2017, made in I.A.No.659 of 2014 by the learned First Additional District Munsif, Tiruchirappalli, wherein the Court below appointed an advocate commissioner to measure the suit schedule property with the help of the surveyor.

2. The learned counsel for the petitioner submitted that without mentioning to the extent of encroachment in the plaint schedule, the Court below passed an order to measure the suit schedule property, merely because the respondents have stated that in western portion of the suit property, the revision petitioners encroached to the extent of 2,000 sq ft. Further no prayer has sought for recovery possession as well as for declaration. In these circumstances, the Court below should not have allowed the application to appoint an advocate commissioner. Without considering all these aspects, the Court below passed the order and therefore, he submitted that the order passed by the Court below is not sustainable in law.



3. On the other hand, the learned counsel for the respondents submitted that initially the respondents sold the property to the revision petitioners to the extent of 4,500 sq ft. Now the revision petitioners have encroached 2,000 sq ft on the western side. The suit was filed for the reliefs of permanent and mandatory injunction. Before passing any final order, it is just necessary to decide whether there is really any encroachment or not. Therefore, he submitted that after considering all these aspects, the Court below passed an order and no interference is required from this court.

4. Upon hearing of the both the counsel and perusing the records, it appears that the suit was filed by the respondents for the reliefs of permanent and mandatory injunction. The respondents are the owner of the larger extent of the property. A portion of the property was sold to the revision petitioners herein to an extent of 4, 500 sq.ft. The grievance of the respondents is that the revision petitioners encroached to an extent 2000sq ft in the western side.

5. It is an admitted fact that the respondents/plaintiffs entitlement has been clearly demarcated in the suit schedule property. Further, the plaintiff only sold to an extent of 4,500 sq ft to the defendants with boundaries. Therefore, I do not see any impediment in appointing the advocate commissioner along with surveyor to measure the suit schedule property and report the Court. All these aspects have been well-considered by the Court below and therefore, the impugned order need not be interfered by this court.

6. In view of the above, this Civil Revision Petition is dismissed. Since the matter is pending for the past five years, this Court directs the advocate commissioner to execute the warrant issued by the Court below within a period of three months from the date receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

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 First Additional District Munsif,
Tiruchirappalli.

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+1 CC to M/s.G.MOHANKUMAR, Advocate (SR-11654[F]
dated 11/03/2022)

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MGJ(01.04.2022) 3P 3C