



CRP(MD)No.2499 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP(MD)No.2499 of 2022
and
CMP(MD)No.12285 of 2022

Shankar : Petitioner

Vs.

Ramaraj : Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records relating to the fair and decreetal order dated 23.11.2022 passed by the District Munsif cum Judicial Magistrate Court, Peraiyur, in I.A.No.169 of 2022 in O.S.No.93 of 2021 and quash the same.

For Petitioner : Mr.K.Sudalaiyandi

ORDER

The petitioner is the defendant in the suit in O.S.No.93 of 2021 pending before the learned District Munsif cum Judicial Magistrate, Peraiyur. The suit was filed by the respondent / plaintiff for an injunction. Pending the suit, the petitioner has moved an interlocutory application in I.A.No.169 of 2022 under Order 26 Rule 9 CPC to appoint an



Advocate Commissioner to identify the suit property and to find out the encroachments made by the respondent / plaintiff in the nearby Government Poromboke land. The trial Court, by order dated 23.11.2022, dismissed this application, holding that

- i) the suit was filed for the relief of an injunction based on a sale deed and the petitioner / defendant, in the written statements, has not disputed the sale deed;
- ii) the petitioner / defendant has admitted that he is not having any place nearby the suit schedule property; and
- iii) for the purpose of identifying whether the respondent / plaintiff has encroached upon a nearby Government land or not, there is no necessity for appointing an Advocate Commissioner in the suit filed for injunction.

Aggrieved over the same, the petitioner has moved the instant revision petition.

2.Learned Counsel for the petitioner submitted that the respondent / plaintiff has encroached the nearby Government Poromboke land to an extent of seven cents. He further submitted that if the encroachment is established by the petitioner, then he can raise his counter claim over that property and therefore, prayed for interference.

3.This Court paid it's anxious consideration to the submissions made by the petitioner's Counsel and also to the materials placed on record.



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4.The suit is filed by the respondent / plaintiff for injunction with respect to the suit schedule property that it belongs to him, by way of a sale deed. The petitioner / defendant has not disputed the ownership of the respondent / plaintiff over the suit property and he has also admitted that he is not having any place nearby the suit schedule property. However, he filed the interlocutory application to establish the fact that the respondent / plaintiff has encroached upon the nearby Government Poromboke land, to an extent of seven cents, which, admittedly, does not form part of the suit schedule property.

5.Under such circumstances, the trial Court has negatived the petitioner's plea, over which, this Court does not find any error that warrants interference. If the petitioner is having any grievance that the respondent has encroached upon the Government land, it is always open to him to approach the authorities concerned by way of filing appropriate applications.

In the result, this revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

Index : Yes / No
Internet : Yes
gk

14.12.2022

To

The District Munsif cum Judicial Magistrate,
Peraiyur.



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B.PUGALENDHI, J.

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