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C.R.P.No.254 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.254 of 2023

K.Annadurai

... Petitioner

Vs.

A.Gunasekaran

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order and decreetal order in I.A.No.2 of 2022 in O.S.No.35 of 2021 dated 22.11.2022 on the file of District Munsif Cum Judicial Magistrate, Thirukalukundram, dismissing the petition sought for appointment of licensed surveyor under order 26 rule 1 & 2 of CPC.

For Petitioner

: Mr.G.Ashokkumar

ORDER

The Civil Revision Petition has been filed against the order and decreetal order in I.A.No.2 of 2022 in O.S.No.35 of 2021 dated 22.11.2022.

2. The revision petitioner is the defendant in the suit and the



respondent/plaintiff, instituted a Suit in O.S.No.35 of 2021 for Permanent Injunction.

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3. During the pendency of the suit, the revision petitioner/defendant filed an Interlocutory Application in I.A.No.2 of 2022 under Order 26 Rule 1 & 2 of C.P.C., to appoint licensed surveyor and survey the suit schedule property.

4. The trial Court considered the Interlocutory Application filed by the revision petitioner/defendant and made a finding that the main suit is filed by the respondent plaintiff for bare injunction, restraining the defendant from interfering with the possession of the suit property. The revision petitioner/defendant has admitted the factum of construction in the suit property and also the possession of the plaintiff in the said property. Therefore, the application filed for appointment of licensed surveyor became unnecessary, more so, the revision petitioner is the defendant and the plaintiff has to establish his case through documents and evidences and the defendant has already filed written statement and therefore, the revision petitioner also



has to defend his case by filing documents and evidences in the manner contemplated.

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5. By filing Interlocutory Application to appoint a Surveyor, no party can be allowed to collect evidence or establish their case. Such a practice, at no circumstances be encouraged. Therefore, the trial Court has rightly rejected the Interlocutory Application filed by the revision petitioner.

6. Accordingly, the order and decretal order dated 22.11.2022 in I.A.No.2 of 2022 in O.S.No.35 of 2021 on the file of District Munsif Cum Judicial Magistrate, Thirukalukundram stands confirmed and consequently, the Civil Revision Petition is dismissed. No costs.

07.02.2023

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Index : Yes
Speaking order
Neutral Citation : Yes

To



The District Munsif Cum Judicial Magistrate,
Thirukalukundram.

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S.M.SUBRAMANIAM, J.

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