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CRP.No.822 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2023

CORAM:

THE HONOURABLE MRS.JUSTICE **T.V.THAMILSELVI**

CRP.No.822 of 2023 and  
CMP.No.6268 of 2023

1.P.Arjunan

2.A.Vinodhkumar

3.A.Rajkumar

... Petitioners

Vs.

1.Srinivasan

2.Sidhan

3.Jayaraman

4.Kamala

5.S.Suresh

6.S.Venkachalam

... Respondents

**PRAYER:**

Civil Revision petition is filed under Article 227 of the Constitution of India to set aside the fair and final order dated 07.12.2022 made in IA.No.4 of 2022 in OS.No.263 of 2022 on the file of the Principal District Munsif Court, Salem by allowing the above civil revision petition.

For Petitioners : Mr.V.Rajesh



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**ORDER**

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Challenging the impugned order dated 07.12.2022 passed in IA.No.4 of 2022 in OS.No.263 of 2022 on the file of the Principal District Munsif Court, Salem, the defendants preferred this revision.

2. The learned counsel for the petitioners submits that the trial judge erroneously allowed the application filed by the plaintiffs by appointing commissioner in order to measure the property with the help of the surveyor.

3. But on bare reading of records, clearly reveals that on earlier occasion, the claim of the plaintiffs was that the defendants encroached 260 sq.ft in the survey No.23/39B, but the contention of the defendants is that they are having right in the property in SF.No.24 and they put up construction in that survey number. However at the earlier occasion, the plaintiffs took efforts to measure the property. Already objection was raised before the revenue authorities to measure the property, for that they also paid amount of Rs.300/- and received challan and the same is mentioned in the affidavit of the plaintiffs, which clearly shows that they took efforts to measure the property in the month of April 2022, but the same was prevented by the defendants, hence



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the plaintiffs are not able to measure the property. According to the plaintiffs, 260 sq.ft. was encroached by the defendants, so to prove the encroachment, the plaintiffs necessarily bound to measure the property and establish the same before the trial court. They took all efforts to measure the same at earlier occasion and the same was resisted by the defendants, so they approached the court by filing application and on hearing objection of the defendants, the trial judge held that in order to adjudicate with regard to issue of encroachment of 260 sq.ft., report of the commissioner is just and necessary. Challenging the same, the defendants preferred this revision.

4. As discussed above, already the contention of the plaintiffs is that the defendants encroached 260 sq.ft. in the survey no.23, but the defendants claimed the property in survey No.24 belongs to them wherein they constructed house utilising policy of the Pradhan Mantri Awas Yojana. But on earlier occasion also, the plaintiffs took efforts to measure the property with the help of firka surveyor and the same was objected. So now they rightly approached the court by filing an application and the same was rightly allowed by the trial Judge, which needs no interference. Therefore, both the parties are directed to cooperate for the execution of the warrant and the trial judge is directed to dispose of the suit as expeditiously as possible.



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5. With the above direction, this civil revision petition is disposed of. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

03.04.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order  
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**T.V.THAMILSELVI, J.**

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To  
The Principal District Munsif Court, Salem

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