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C.R.P.No.3108 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. No. 3108 of 2023

and

C.M.P.No.19244 of 2023

K.V.Ramamurthy

. . . Petitioner

Versus

S.Parameswari

. . . Respondent

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order dated 10.04.2023 in I.A.No.1 of 2022 in O.S.No.2112 of 2018 on the file of the 12th Assistant City Civil Court, Chennai.

For Petitioner : Mr.B.Mushtaque Ahamed

ORDER

This revision petition is filed against the order dated 10.04.2023 made in I.A.No.1 of 2022 in O.S.No.2112 of 2018 on the file of the 12th Assistant City Civil Court, Chennai.



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2. The learned counsel for the petitioner/defendant submitted that the respondent/plaintiff filed a suit in O.S.No.2112 of 2018 for recovery of a portion of property alleged to have been given to her, based on a compromise decree rendered in a partition suit in O.S.No.8812 of 1998. When the suit was posted for arguments, the respondent/plaintiff filed an application in I.A.No.1 of 2022 in O.S.No.2112 of 2018 for appointment of an Advocate Commissioner to inspect the suit premises. The trial Court vide order dated 10.04.2023 allowed the application, as against which the present revision petition has been filed.

3. The learned counsel for the petitioner/defendant submitted that the trial Court found that the petitioner/defendant and the respondent/plaintiff are residing in the same address. Actually, the address of the petitioner in the plaint differs from the address of pre-suit notice served on the petitioner, through the counsel for the respondent/plaintiff. Admittedly, the petitioner/defendant is residing at Old.No.56, New No.57/A1, Naval Hospital First Lane, Periamet, Chennai – 600 003, however, in the plaint, it was mentioned as No.25 (Old No.1/2) Naval Hospital First Lane, Periamet, Chennai – 600 003. The trial Court erroneously allowed the application on the ground that the petitioner/defendant had received summons at the address



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mentioned in the plaint and came to the conclusion that the summons are handed over to the party, even without considering the fact whether the address to which the summons were served is correct or not. He further submitted that the plaintiff filed the application for appointment of Advocate Commissioner only for altering the pleadings in the plaint, which paved the way for fresh cause of action. He further submitted that the petitioner and the respondent are residing in adjacent lands and not in the same address.

4. Heard Mr.B.Mushtaque Ahamed, learned counsel for the petitioner and perused the records.

5. Considering the facts and circumstances of the case and also considering the submissions made by the learned counsel for the petitioner/defendant, this Court is of the view that the order passed by the trial Court does not require interference of this Court for the reason that extent of the property and who is in possession of the property in question can be decided only after trial based on the oral and documentary evidence and Advocate Commissioner's report. Hence, as directed by the trial Court, Advocate Commissioner shall execute the warrant and measure the subject property with the help of a surveyor and submit the report before the trial



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Court. As there is a dispute with regard to the address of the petitioner/defendant, this Court directs the respondent/plaintiff to file an amendment petition to amend the address of the petitioner/defendant in the plaint and trial Court can consider the same and pass appropriate orders.

6. In view of above directions, this Civil Revision Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

30.08.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ms

To

The 12th Assistant Judge,
City Civil Court,
Chennai.



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V.BHAVANI SUBBAROYAN, J.,

ms

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