



C.R.P. No. 2559 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.07.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. No. 2559 of 2023

and

C.M.P.No.15798 of 2023

M.S. Rajalakshmi

...Petitioner

.Vs.

Sabirabanu

...Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the I.A.No.01 of 2023 in O.S.No.219 of 2010 passed on 05.04.2023 on the file of DMC Court at Arokonam and allow this Civil Revision petition and reopening defendant side evidence and pass orders.

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For Petitioner : Mr.M. Udhayakumar

ORDER

This petition is filed to set aside the order passed in I.A.No.01 of 2023 in O.S.No.219 of 2010 dated 05.04.2023 by the learned Judge DMC Court at Arokonam and permit for reopening the defendant side evidence.

2. The facts of the case is that there was a property dispute between the petitioner and the respondent with regard to the boundaries. Hence, the respondent herein filed a suit in O.S.No.219 of 2010 and also filed I.A.No.01 of 2023 in O.S.No.219 of 2010 to permit the examination of witnesses of the vendor of the subject property under Order 16 Rule 1 and 2 and under Section 151 of C.P.C and the same was dismissed vide order dated 05.04.2023. Hence this petition.

3. The learned counsel for the petitioner submitted that it is just and necessary to examine the vendor as a witness to ascertain the fact as to



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whether he has encroached the subject property or not, which is the subject matter of this petition. Hence prays this Court to allow this petition.

4. On a perusal of the impugned order, it is seen that the learned Judge has made an observation that there is no dispute regarding the property purchased or the measurements in the sale deed. The only dispute is whether the defendant has encroached 121.5 feet as stated in B schedule and constructed a bathroom. When the defendant has purchased plot No.8 with definite boundaries and when it was a vacant site at the time of purchase, the vendor will not be able to speak about the alleged encroached portion. Hence, the examination of vendors as sought for is not essential to decide the dispute between the parties, which finding in the considered view of this Court cannot be brushed aside easily. Therefore, there is no necessity to interfere with the impugned order passed by the Court below.



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5. In view of the above, the order passed in I.A.No.01 of 2023 in O.S.No.219 of 2010 dated 05.04.2023 by the learned Judge DMC Court at Arokonam is confirmed. Accordingly this Civil Revision Petition is dismissed. No order as to costs. Consequently the connected miscellaneous petition is closed.

27.07.2023

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Index : Yes/No

Internet: Yes/No

To.

1. The DMC Court at Arokonam



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V.BHAVANI SUBBAROYAN,J.
Smn

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