



C.R.P. No. 3614 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 3614 of 2023

and

C.M.P.No. 22619 of 2023

A.Vijayan

... Petitioner

Versus

1. Sathamban,
2. Kanthammal,
3. Anbazhagan,
4. Gnanam,
5. Thirunavukarasu

... Respondents

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order dated 31.01.2023 made in I.A.No.1 of 2022 in O.S.No. 317 of 2019 on the file of the learned District Munsif cum Judicial Magistrate, Gummidipoondi.

For Petitioner : Mr.D.Gopinathan



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ORDER

WEB COPY Challenging the impugned order passed in I.A.No.1 of 2022 in O.S.No. 317 of 2019 by the District Munsif cum Judicial Magistrate, Gummidipoondi, the plaintiff preferred this Civil Revision Petition.

2. Since the relief is claimed against the trial judge, notice to the respondents is dispensed with.

3. The learned counsel for Revision Petitioner would submit that before the trial court, he has filed a suit seeking for the relief of permanent injunction, more particularly, with regard to usage of the suit B Schedule property from the suit A schedule property comprised in Survey No.90/61 measuring 0.8 meter with four boundaries claimed as it is the only pathway for the plaintiff to reach suit B schedule property. The defendants, who are neighbours contested the suit denying the plaintiff's claim. Issues were framed and trial was begin. The plaintiff was examined as P.W.1 and through P.W.2, he wanted to mark FMB sketch in respect of entire suit property as additional document on his side. Hence, he filed an application



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in I.A.No. 1 of 2022 under Order VII Rule 14(3) and Sec.151 of C.P.C. to receive the additional document on his side. But the trial judge, without giving opportunity, dismissed the said application holding that already the plaintiff was examined as P.W.1 and through P.W.2 the said document cannot be marked. Challenging the said findings, the plaintiff preferred this Civil Revision Petition.

4. The learned counsel for Revision Petitioner pointed out that to prove the existence of pathway, he wanted to mark FMB sketch through P.W.2 for having enjoyed the property for several decades. If at all, the said document is not marked on his side, the physical features as well as physical boundaries on ground cannot be established. So, he wanted to set aside the findings of the trial judge.

5. On perusal of records, it would reveal that the trial was begun and the Revision Petitioner was examined as P.W.1. But, he wanted to mark FMB sketch pertaining to the suit property through P.W.2, who is also having enjoyed the suit property. Furthermore, as on date, the plaintiff's evidence has not been closed and if opportunity is not given to the plaintiff to prove his case before the trial court, his valuable right to defend his case



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will be defeated. By giving opportunity to the plaintiff to mark the document, it would not cause any prejudice to the respondents. Therefore, the trial judge has committed an order in dismissing the application and the same is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the findings of the trial judge in I.A.No.1 of 2022 is set aside. The trial judge is directed to permit the plaintiff to produce the document and proceed with the case as per manner known to law and to dispose the case within a period of three months from the date of receipt of copy of this order. Both parties are directed to cooperate with the trial proceedings. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

05.10.2023

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
rpp

To

District Munsif cum Judicial Magistrate,
Gummidipoondi.

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T.V.THAMILSELVI, J.

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