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CRP No.3628 of 2023
and CMP.No.22712 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.10.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

C.R.P.No.3628 of 2023
and
CMP.No.22712 of 2023

Mani

... Petitioner

Versus

Selvam

...Respondent

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the fair and decreetal order in I.A.No.3 of 2023 in O.S.No.462 of 2019 dated 23.03.2023 on the file of II Additional District Munsif, Salem.

For Petitioner : Mr. J.Prithivi

ORDER

The petitioner has filed this petition to set aside the fair and decreetal order in IA.No.3 of 2023 in O.S.No.462 of 2019 dated 23.03.2023 on the file of II Additional District Munsif, Salem.

2. Challenging the order passed in I.A.No.3 of 2023 before the trial

Court he filed the suit in O.S.No.462 of 2019 for the relief of mandatory



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injunction, declaration and permanent injunction. The defendant also contested the suit. He has filed an application to note down the physical features of the suit property, more particularly the construction of the wall. He filed I.A.No.3 of 2023 in O.S.No.462 of 2019, for appointment of Commissioner accordingly, Commissioner was appointed and submitted his report. During the pendency of the proceedings, the defendant constructed a wall through which unobstructed air and lights were is curtailed. Hence, the necessity arose for him to file a petition to amend the prayer and the mandatory injunction was allowed. In the amended plaint also to prove the said construction during the pendency of the proceeding, the plaintiff filed an application in I.A.No.3 of 2023 to appoint an Advocate Commissioner to note down the physical features and developments, but the said application was dismissed by the learned trial Judge on the ground sufficient reason was not assigned by the plaintiff for appointment of the Commissioner. Challenging the said findings, the plaintiff has preferred this revision petition.

3. On a perusal of the records it reveals that already a Commissioner was appointed during the pendency of the proceedings. As per the Commissioner report 5 ft. wall was constructed. Subsequently, the plaintiff



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amended the prayer for mandatory injunction to remove the said wall to establish those facts before the trial Court and the report of the Commissioner is just and necessary, more particularly in respect of mandatory relief. But the learned trial Judge without appreciating the legal probation erroneously dismissed the petition without any reason and it is liable to be set aside.

4. Therefore, this Court is inclined to set aside the findings of the learned trial Judge in I.A.No.3 of 2023 in O.S.No.462 of 2019 dated 23.03.2023. However, the learned trial Judge is directed to appoint the Commissioner and proceed with the matter known to law, and dispose of the case within a period of two months from the date of receipt of a copy of this order.

5. Accordingly, this Civil Revision petition is Allowed. Consequently, connected Miscellaneous petition is closed. No Costs.

06.10.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No
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T.V.THAMILSELVI, J.

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To

- 1.The II Additional District Munsif, Salem.
- 2.The Section Officer,
VR-Section, High Court of Madras.

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