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C.R.P.No.3778 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.3778 of 2023

and

C.M.P.No.23482 of 2023

K.Sudhakar

... Petitioner

-Vs-

1.The State of Tamil Nadu
rep.by the District Collector
Erode District, Erode-11.

2. The District Collector,
Erode District,
Collectorate, Sampath Nagar,
Erode-11.

3. The Tahsildar
Perundurai Taluk Office
Perundurai 638 052.

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order passed in I.A.No.577 of 2018 in O.S.No.150 of 2018 on the file of the District Munsif Court, Perundurai dated 11.01.2023.



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WEB COPY For Petitioner : Mr.V.S.Kesavan
For Respondents : Mr.V.Jeevagiridharan
Additional Government Pleader

ORDER

Challenging the impugned order passed in I.A.No.577 of 2018 in O.S.No.150 of 2018 by the District Munsif, Perundurai, the Revision Petitioner/plaintiff preferred this Civil Revision Petition stating that the trial judge erroneously dismissed the application, which was filed by him seeking to appoint an advocate commissioner stating that for collection of evidence, the Commissioner cannot be appointed.

2. The learned counsel for Revision Petitioner would submit that he filed a suit for permanent injunction against the defendants and also made amendment in respect of demarcation of boundary line, which was allowed on 18.07.2023 in I.A.No. 8 of 2023 and also as per the plaint schedule, during his life, his father constructed a marriage hall viz., Arunachala Gounder Thirumana Mandapam about 40 years back in the front portion of the property. However, on the south of the suit property, there exists an east-west 12 ft. cart track from north-south tar road towards east in Survey No.780/1 and it leads to patta lands. It is the only access for



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his land in Survey No.783/2. Furthermore, during the re-survey proceedings, no notice was given to him and no enquiry was conducted.

The cart track in R.S.No. 780/1 became narrow on the eastern side and therefore, if the encroachment made by the other owners abutting the said 12 ft. cart track is not removed, the said cart track cannot be used as their access. Therefore, necessity arose for him to file a suit and also filed an application for appointment of advocate commissioner. But, without appreciating the said fact, the learned trial judge dismissed the application. Challenging the same, the present Civil Revision Petition has been filed.

3. On seeing the plaint as well as affidavit filed in I.A.No. 577 of 2018, it would clearly reveals that in respect of Government cart track, there is an encroachment according to the plaintiff and the same can be proved by measuring the same with the help of Commissioner. But, without giving opportunity to the plaintiff, the said application was dismissed by the trial judge, which would shows the non-application of judicious mind of trial judge. If the opportunity is not given to the plaintiff to prove the encroachment, his valuable right to defend the case will be defeated. Therefore, this court is inclined to set aside the findings rendered by the trial judge in I.A.No.577 of 2018 in O.S.No.150 of 2018 and the



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trial judge is directed to give opportunity to both sides and appoint an advocate commissioner to measure the property with the help of Surveyor and based on a report, proceed with the trial and dispose the suit as per manner known to law. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No

Speaking Order : Yes/No

To

1. The District Munsif, Perundurai.
2. The District Collector
The State of Tamil Nadu, Erode District, Erode-11.
2. The District Collector,
Erode District, Collectorate, Sampath Nagar, Erode-11.
3. The Tahsildar,
Perundurai Taluk Office, Perundurai 638 052.
4. The Public Prosecutor, High Court, Madras.
5. The Section Officer, V.R.Section
High Court, Madras.



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T.V.THAMILSELVI, J.

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