



C.R.P.No. 2921 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No. 2921 of 2019
and
C.M.P. No. 18919 of 2019

Chinnusamy

....

Petitioner

Vs

1. Subramani
2. Sakthivel
3. Chinnathambi

....

Respondents

Prayer : Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 09.07.2019 passed in I.A.No.01 of 2019 in I.A.No.852 of 2017 in O.S.No.184 of 2017 on the file of the learned District Munsif, Mettur, Salem District.

For Petitioner : Mr.M.R.Jothimanian

For Respondents : Mr.P.Jagadeesan

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 09.07.2019 passed in I.A.No.01 of 2019 in I.A.No.852 of 2017 in O.S.No.184 of 2017 on the file of the learned District Munsif,



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Mettur, Salem District, thereby allowing the petition seeking appointment of Advocate Commissioner.

2. The petitioner is the plaintiff and the respondents are the defendants. The petitioner filed a suit for bare injunction in respect of the suit property. According to the petitioner, they had purchased suit property comprised in Survey No.256/6 admeasuring 27 cents from one Chinna Ponnu by a registered sale deed dated 16.08.2017. While being so, the respondents wilfully obstructed the plantation and tried to encroach the suit property. Hence, the suit.

3. Pending suit, the respondents filed an application seeking appointment of Advocate Commissioner to measure the suit schedule property and to note down the physical features of the same. The Court below allowed the petition on the ground that the petitioner purchased the property comprised in Survey No.256/3 in which one of the boundary in the suit property was mentioned as Poramboke. Already the petitioner constructed a house in part of the suit property and planted coconut trees in



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part of the suit property. Suppressing the said fact, the respondents filed a suit for bare injunction. Therefore, it is just and necessary to measure the suit property with the help of surveyor, to note down the physical features of the suit schedule property.

4. Admittedly, there is no dispute in respect of identifying the suit property. The respondents filed a suit for bare injunction and claiming title by a registered sale deed dated 16.08.2017. According to the respondents, they had purchased the property from one Chinna Ponnu to an extent of 27 cents comprised in Survey No.256/6. The case of the petitioner is that they had purchased the property comprised in Survey No.256/6. The suit property is situated adjacent to his property. Therefore, the burden of proof is shifted on the shoulders of the respondents to prove their case. There is absolutely no need to appoint any Advocate Commissioner to measure the property, that too, on the request of the petitioner herein. It would amount to collection of evidence and as such, the Trial Court ought not to have allowed the petition for appointment of Advocate Commissioner.



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5. In view of the above, the order dated 09.07.2019 passed in I.A.No.01 of 2019 in I.A.No.852 of 2017 in O.S.No.184 of 2017 on the file of the learned District Munsif, Mettur, Salem District, is hereby set aside. Accordingly, this Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.

22.02.2023

Index:Yes/No
Internet:Yes/No
Neutral Citation: Yes/No

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To
The District Munsif,
Salem.



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