



C.R.P. No.4118 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 4118 of 2023

and

C.M.P. No.25160 of 2023

Elangovan,
rep. By his Power Agent
Ezhilarasi

... Petitioner

Versus

1. Seeman
2. Kalaiselvi

.. Respondents

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order dated 11.10.2022 made in I.A.No.446 of 2016 in O.S.No.175 of 2016 on the file of the learned District Munsif Court, Jayankondam.

For Petitioner

: Mrs.M.Senthilvadivu



C.R.P. No.4118 of 2023

ORDER

WEB COPY Challenging the impugned fair and decreetal order passed in I.A.No.446 of 2016 in O.S.No. 175 of 2016, on the file of learned District Munsif, Jayankondam, the Revision Petitioner/plaintiff preferred this Civil Revision Petition.

2. Since the relief claimed challenging the order passed by the trial court, notice to the respondents is dispensed with.

3. Before the trial court, the Revision Petitioner/plaintiff filed an application to appoint an advocate commissioner to note down the physical features and to measure the property with a qualified Surveyor and the same was dismissed by the trial judge holding that in respect of encroachment alleged by the plaintiff can be proved by marking revenue documents by oral evidence, for that the appointment of advocate commissioner is not necessary, besides, it is also amounting to collection of evidence. Challenging the said findings, the Revision Petitioner/plaintiff preferred this Civil Revision Petition.

4. The learned counsel for Revision Petitioner argues that before the trial court, he filed a suit for injunction not to cause interference stating that



C.R.P. No.4118 of 2023

the defendants are attempting to put up a compound wall by encroaching the plaintiff's property and even as per the F.M.B. Sketch, the measurements were mistakenly mentioned. So, taking advantage of that, the defendants are attempting to cause encroachment. Therefore, the plaintiff filed a suit and to prove the same, now he wanted to appoint an advocate commissioner to note down the physical features as well as to measure the property, since because measurement is under dispute. So, it is not amounting to collecting of evidence, but without considering his submissions, the trial judge erroneously dismissed the application filed by the Revision Petitioner, as such is unfair and the same is liable to be set aside.

5. Considering his submissions and on perusal of records, it reveals that the Revision Petitioner/plaintiff had filed a suit seeking for the relief of injunction restraining the defendants, who are attempting to put up a compound wall by encroaching his property, so the necessity arose for him to file an application in I.A.No.446 of 2016 praying to appoint an advocate commissioner to note down the physical features and to measure the suit property with the help of surveyor, since the because the measurement is under dispute. But the trial judge dismissed the application holding that the



C.R.P. No.4118 of 2023

encroachment alleged by the plaintiff can be proved by marking revenue documents by oral evidence, besides it is amounting to collection of evidence. If opportunity is not given to prove his claim before the trial court, the Revision Petitioner's valuable right to defend the case will be defeated. However, without appreciating the said legal proposition, the order passed by the trial judge is erroneous one and the same is liable to be set aside. Accordingly, the findings of the trial judge in I.A.No. 446 of 2016 in O.S.No.175 of 2016 is set aside and the said application is ordered to be allowed. The trial judge is directed to appoint an advocate commissioner and to measure the property by giving notice to the defendants within a period two weeks from the date of receipt of copy of this order. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

24.11.2023

Index: Yes/No
Internet: Yes/No
rpp

To
District Munsif, Jayankondam.

4/5



WEB COPY



C.R.P. No.4118 of 2023

T.V.THAMILSELVI, J.

rpp

C.R.P. No.4118 of 2023

24.11.2023