



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2023

CORAM:

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

CRP Nos. 3875 & 3919 of 2023
and CMP Nos. 23903 & 24133 of 2023

Selvaraj

...Petitioner in both petitions

Vs.

1.R.Joseph

2.Ebinesar

....Respondents in both petitions

PRAYER in CRP No. 3875 of 2023 : This petition filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 21.07.2023 passed in I.A no. 6 of 2023 in O.S No. 97 of 2019 on the file of Principal District Munsif court, Erode.

PRAYER in CRP No. 3919 of 2023 : This petition filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 21.07.2023 passed in I.A no. 7 of 2023 in I.A No. 3 of 2019 in O.S No. 97 of 2019 on the file of Principal District Munsif court, Erode.

For Petitioner : Mr.G.Kaithalamalai Kumaran
(in both petitions)



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CRP. No. 3919 of 2023

COMMON ORDER

These petitions have been filed to set aside the fair and final order dated 21.07.2023 passed in I.A no. 6 and 7 of 2023 in I.A No. 3 of 2019 in O.S No. 97 of 2019 on the file of Principal District Munsif court, Erode.

2. The learned counsel for the petitioner submits that the petitioner filed a suit in O.S No. 97 of 2019 for the relief of permanent injunction and also for appointing advocate commissioner to measure the suit properties with the aid of competent surveyor based on the title documents and revenue records of the parties and to fix the boundary lines for the suit schedule properties by means of mandatory injunction. While so, the defendants attempted to trespass into the suit property and thereby made encroachment over the suit properties. Thereafter, the petitioner filed I.A No. 3 of 2019 for appointment of Advocate commissioner to measure the properties with the help of the surveyor had measure the properties and filed a report and plan. The report of advocate commissioner is differ from the report of the surveyor. The Commissioner's report and plan had categorically stated about the encroachments made in the suit schedule



CRP. No. 3919 of 2023

properties. Due contradiction of the report of the surveyor and the Advocate commissioner the petitioner filed I.A No. 7 of 2023 for appointment of fresh advocate commissioner and also filed another I.A No. 6 of 2023 to amend the plaint. But the said application was dismissed by the Trial Court hence the petitioner filed this petition.

3. Heard the learned counsel for the petitioner.

4. Considering the facts of the case, the petitioner filed a petition to appoint fresh advocate commissioner to measure the suit property since because that there was a contradiction in the report of the advocate commissioner and the surveyor and also the petitioner filed another application to amend the prayer by including the mandatory injunction. On seeing the facts of the case, there was contradiction in the Advocate commissioner's report and the surveyor hence the petitioner filed application to appoint fresh advocate commissioner as such is justifiable. Further, as on date, the Trial was not completed if such application is not allowed it would leads to multiplicity of proceedings and also the suit is pending from the year of 2019 and also the plaintiff is aged about 70 years. Further, as per the plaint averment the defendant constructed wall in the suit property and attempted to encroach the suit property hence, if plaint is amended it would



CRP. No. 3919 of 2023

not cause prejudice to the respondents but the Trial judge erroneously dismissed the application as such is liable to be set aside. Hence, the Trial court is directed to appoint new Advocate commissioner to measure the suit property and also the liberty is given to the respondents to file additional written statement. Accordingly, order passed by the Trial Court in I.A No. 6 and 7 of 2022 in O.S No. 97 of 2019 is set aside. Thus, I.A No. 6 and 7 of 2022 is allowed.

5. In the result, these Civil Revision Petitions are allowed. No cost. Consequentially, connected miscellaneous petitions are closed.

05.12.2023

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CRP. No. 3919 of 2023

T.V.THAMILSELVI,J.

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To

1. The Principal District Munsif court, Erode.

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