



C.R.P.No.3729 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2023

CORAM:

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

C.R.P.No.3729 of 2023
and
C.M.P.No. 23276 of 2023

Thangapandian ... Petitioner

-Vs-

G.Parameshwaran ... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and final order passed in I.A.No.3 of 2022 in O.S.No.218 of 2022 on the file of Principal District Munsif Court, Salem dated 23.06.2023.

For Petitioner : Mr.B.Gopalakrishnan



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ORDER

Challenging the impugned order passed in I.A.No.3 of 2022 in O.S.No.218 of 2022 by the learned Principal District Munsif, Salem, the Revision Petitioner/plaintiff preferred this Civil Revision Petition.

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

3. Before the trial court, the Revision Petitioner filed a suit in O.S.No. 219 of 2022 against the defendant for the relief of permanent injunction in respect of the suit property contending that the defendant, being adjacent landowner attempted to cause interference. Pending suit, he filed an Interlocutory Application in I.A.No. 3 of 2022 praying to appoint an advocate commissioner, but the said application was dismissed by the trial judge stating that to collect the evidence, the plaintiff filed the said application, which cannot be entertained. Challenging the said findings, the plaintiff preferred this Civil Revision Petition.

4. Before the trial court, the defendant appeared and submitted his written statement and now the case is at the stage of trial. On a bare perusal of written statement, the defendant totally denied the plaintiff's claim and also contended that it is a Government poramboke and also the



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suit property was in enjoyment of one Govindammal, but the contention of plaintiff is that he purchased the property through a sale deed. Therefore, if at all, any encroachment is made by the defendant as alleged by the plaintiff, the same is to be proved by adducing proper evidence. However, the appointment of advocate commissioner would minimise the court work in respect of physical features in and around the suit property. But, without considering the same, the trial judge dismissed the application, as such is erroneous one and the same is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the order passed by the trial judge in I.A.No.3 of 2022 in O.S.No.218 of 2022 is set aside and the said application is ordered to be taken on file. The learned trial judge is directed to appoint an advocate commissioner and to proceed with the matter by giving opportunity to both parties as well as to the Advocate Commissioner to visit the property to note down the physical features and measure the property. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

30.10.2023

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To



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Principal District Munsif,
Salem.

T.V.THAMILSELVI, J.

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