



C.R.P(MD)No.439 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.02.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.439 of 2023

and

C.M.P(MD)No.2105 of 2023

Gandhimathi

... Petitioner/Petitioner/
Plaintiff

Vs.

1.Murugappan

2.Meenakshi Achi

... Respondents/Respondents/
Defendants

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 23-12-2022 made in I.A.No.97/2022 made in O.S.No.294/2013 on the file of the District Munsif, Pudukottai by allowing this Civil Revision petition.

For Petitioner : Mr.A.V.Arun

ORDER

The plaintiff in a suit for bare injunction is the revision petitioner.



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2. The plaintiff had filed an application under Order 26 Rule 9 of Code of Civil Procedure for appointment of an Advocate Commissioner for measurement of entire 'B' schedule property and the same was dismissed by the trial Court. Challenging the same, the present revision petition has been filed.

3. According to the learned counsel appearing for the petitioner, the plaintiff claims title and possession over a portion of Survey No. 65/1A within the specific measurements mentioned in the 'B' schedule property. According to the learned counsel appearing for the petitioner, for the balance extent, the 2nd defendant claims title and possession. Hence, it is essential for appointment of an Advocate Commissioner to demarcate the specific extent of property claimed by the petitioner and that of the 2nd defendant. Therefore, the present application has been filed.

4. A perusal of Paragraph No.9 of the written statement discloses that the possession of the plaintiff in 'B' schedule property is admitted by the defendants. However, the defendants have only questioned that the plaintiff is not in settled possession of the property to enable him to get a



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decree for permanent injunction. Therefore, it is clear that the issue that revolves only around the character of possession of the plaintiff over the 'B' schedule property and not the actual possession of the plaintiff over the property. When the possession of the plaintiff is admitted by the defendants, the question of appointing an Advocate Commissioner to measure the said property would not arise and it would not be relevant for deciding the issues that arise out of the suit. Therefore, I don't find any illegality or infirmity in the order passed by the trial Court.

5. Hence, this Civil Revision Petition stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

21.02.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The District Munsif,
Pudukottai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Order made in
C.R.P(MD)No.439 of 2023

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