



CRP(MD).NO.840 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

CRP(MD).No.840 of 2021
and
C.M.P(MD).No.4492 of 2021

R.Marimuthu

... Petitioner/Petitioner/Plaintiff

Vs.

Kounraj

... Respondent/Respondent/Defendant

PRAYER : Revision Petition filed under Article 227 of the Constitution of India, to allow the revision petition against the fair and decreetal order dated 19.01.2021 made in I.A.No.82 of 2020 in O.S.No.62 of 2020 on the file of the Additional Subordinate Court, Thanjavur.

For Petitioner : Mr.G.Karnan

ORDER

The present civil revision petition has been filed by the plaintiff in a suit for declaration of title and permanent injunction.



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2. Pending the suit, the plaintiff had filed I.A.No.82 of 2020 for appointment of Advocate Commissioner to measure the suit schedule properties, to conduct a local inspection and to measure the suit schedule property with reference to the sale deed of the plaintiff and defendant and fix the boundary of the plaintiff and the defendant.

3. In para No.5 of the interlocutory application, the plaintiff/petitioner has contended that when he attempted to raise a compound wall on all his four sides, the defendant had raised an objection with regard to the raising of the compound wall on the eastern side of the plaintiff's property claiming an extent of 3½ sq.ft., into the plaintiff's property. Hence, according to the petitioner, unless property is measured with the help of surveyor by an Advocate Commissioner, this dispute cannot be dissolved. The defendant has filed a counter. In para No.10 of the counter, the defendant has also agreed that a Senior Member of the Bar could be appointed as Advocate Commissioner along with surveyor to measure the suit schedule property so as to resolve the issue. However, by way of impugned order, the learned trial Judge has dismissed the same, without even assigning any reasons for dismissing



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the said application. This order is under challenge in the present revision petition.

4. Though the respondent has been served, there is no appearance either in person or through counsel.

5. I carefully considered the submissions made on either side.

6. From the perusal of para No.5 of the affidavit in the interlocutory application and para No.10 of the counter filed by the defendant in the interlocutory application, it is clear that there is a dispute between the plaintiff and the defendant with regard to the eastern side of the plaintiff's property for an extent of 3½ sq.ft. This issue cannot be resolved by letting in oral or documentary evidence. Unless Advocate Commissioner is appointed, this issue cannot be resolved. The order of the learned Additional Subordinate Judge, Thanjavur, is therefore set aside and I.A.No.82 of 2020 in O.S.No.62 of 2020 is hereby allowed. The learned Additional Subordinate Judge, Thanjavur, is directed to appoint an Advocate Commissioner as prayed for with a direction to file a report within a period of eight weeks.



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7. With the aforesaid observations, the Civil Revision petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

15.02.2023

Index : Yes / No
Internet : Yes / No
Rmk

To

1. The Additional Subordinate Judge, Thanjavur.



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R.VIJAYAKUMAR ,J.,

Rmk

Order made in
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