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C.R.P(PD)(MD).No.4 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.04.2023

Pronounced on : 07.06.2023

CORAM:

**THE HONOURABLE MR.JUSTICE P.VADAMALAI**

C.R.P(PD)(MD).No.4 of 2019

and

C.M.P(MD)No.17 of 2019

M.Micheal Raj

... Petitioner/Plaintiff

Vs.

1.Rayammal

2.A.Devasagayam

3.A.Lawrence

4.A.Joseph

5.Aksha Mallika

... Respondents/Defendants

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order made in I.A.No.334 of 2017 in O.S.No.88 of 2012, dated 01.11.2017 passed by the Sub Court, Sivakasi and allow the revision.

For Petitioner : Mr.S.Vellaichamy

For Respondents : Mr.M.Ashok Kumar

### **ORDER**

This Civil Revision Petition is filed to set aside the order made in I.A.No.334 of 2017 in O.S.No.88 of 2012, dated 01.11.2017 passed by the Sub Court, Sivakasi.



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2. The brief facts of the case:

The revision petitioner is the plaintiff in O.S.No.88 of 2012 on the file of the Sub Court, Sivakasi. He filed a suit against the defendants 1 to 5 for the relief of declaration and consequential permanent injunction and for mandatory injunction to remove the encroachments made in the 2<sup>nd</sup> item of suit property. Pending suit, the plaintiff has filed the petition in I.A.No.334 of 2017 in O.S.No.88 of 2012 for appointment of advocate/commissioner to visit the suit property along with the Village Administrative Officer and Surveyor and to file report in respect of encroachment. The defendants have strongly resisted the petition by filing detailed counter. After hearing both, the Trial Court has dismissed the petition in I.A.No.334 of 2017 in O.S.No.88 of 2002 on 01.11.2017. Aggrieved by the order of the Trial Court, the petitioner/plaintiff moved this Court by way of this Civil Revision Petition.

3. Heard both side and perused the records in this Civil Revision Petition.

4. The learned counsel appearing for the revision petitioner has argued that the petitioner has filed the main suit in O.S.No.88 of 2012 against the respondents before the Trial Court for declaration, permanent



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injunction. After filing the suit, the defendants have made encroachment and constructed a building therein and hence, the petitioner has filed amendment petition and added the relief of mandatory injunction to remove the encroachments made by the defendants. In order to find out encroachment made or not, the petitioner has filed the petition for appointment of advocate/commissioner for visiting the suit property with assistance of revenue officials and for filing the report to that effect. But, the Trial Court has observed that the petitioner has not assigned valid reason and also on the ground that no date of encroachment made by the respondents was mentioned. The findings of the Trial Court is not correct in the eye of law and the commissioner's report is necessary one to decide the suit considering the reliefs sought therein. Therefore, the impugned order has to be set aside and the revision petition may be allowed.

5. Per contra, the learned counsel for the respondents has vehemently contended that the petitioner has filed the petition seeking appointment of advocate commissioner belatedly ie., after lapse of five years that too the suit is pending for cross examination D.W.2 after completion of the plaintiffs' side evidence. Further, the trial of the suit is going to be closed and the suit is ripe for argument. The petitioners and the respondents are close blood relatives and after demise of their father



they have orally partitioned the properties in the presence of elders and the parties have constructed houses in their respective shared portion and have been residing therein. After oral partition several deeds were also created and registered mentioning the oral partition with the knowledge of the petitioner. Suppressing all these facts, the petitioner has filed the vexatious suit and filed the petition for appointment of advocate commissioner to prolong the suit proceedings further. Considering all these aspects, the Trial Court has dismissed the petition, which warrants no interference by this Court. Hence, the petitioners have no valid case in this Civil Revision Petition and the same may be dismissed.

6. On hearing both and on perusal of records, it is clear that the revision petitioner and the respondents 2 to 5 are the children of late Arokiasamy born through the 1<sup>st</sup> respondent. The petitioner has filed the main suit in the year 2012 seeking for declaration, permanent injunction and mandatory injunction. If so, the petitioner has firstly to prove his title over the suit property. It is the case of the respondents that after demise of Arockiasamy, they have orally partitioned the properties and constructed building in their respected allotted portion and living therein and rival claim is persisted over the properties. It is the further case of the respondents that the plaintiff side evidence was closed and when the



suit was pending for cross examination of D.W.2, the petitioner has filed the petition for appointment of advocate commissioner after lapse of five years from the filing of the suit to prolong the proceedings. There is no objection raised by the petitioner regarding the relationship and the oral partition. The petitioner has not chosen to file the petition for report of advocate commissioner at early stages, but the petitioner allowed the suit proceedings till cross examination of D.W.2. The respondents state that the trial is going to be closed and the suit is now ripe for arguments. The petitioner has not disputed the same. Therefore, considering the nature of the relief sought in the suit and also considering the facts and circumstances, the Trial Court has correctly dismissed the petition by passing the impugned order I.A.No.334 of 2017 in O.S.No.88 of 2012, which needs no interference by way of this Civil Revision Petition and thus, this Civil Revision Petition fails and the same is liable to be dismissed.

7. In the result, this Civil Revision Petition is dismissed. No cost. Consequently, connected miscellaneous petition stand dismissed.

07.06.2023

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

- 1.The Sub Court,  
Sivakasi
- 2.The Section Officer,  
Vernacular Records,  
Madurai Bench of Madras High Court,  
Madurai.



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**P.VADAMALAI, J.**

vsd

Pre - Delivery Order made in  
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