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C.R.P(MD)Nos.1603 and 1606 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.07.2023

CORAM

**THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN
THILAKAVADI**

C.R.P(MD)Nos.1603 and 1606 of 2023

and

C.M.P(MD)Nos.7879 and 7883 of 2023

S.Jerald Sagayanathan

... Petitioner/Respondent/
Plaintiff in both C.R.Ps

Vs.

D.N.Dharmalingam

... Respondent/Petitioner/
Defendant in both C.RPs

Prayer in C.R.P(MD)No.1603 of 2023: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records connected with the order in I.A.No.8 of 2023 in O.S.No.662 of 2022 dated 20.03.2023 passed by the IV Additional Sub-Court, Trichy and set aside the same.

Prayer in C.R.P(MD)No.1606 of 2023: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records connected with the order in I.A.No.7 of 2023 in I.A.No.4 of 2022 in O.S.No.662 of 2022 dated 20.03.2023 passed by the IV Additional Sub-Court, Trichy and set aside the same.

For Petitioner
in both cases

:Mr.S.Malaikani



COMMON ORDER

The revision petitioner is the plaintiff has filed a suit in O.S.No.662 of 2022 before the IV Additional Sub-Court, Trichy, for bare injunction against the respondent.

2.According to the revision petitioner, the suit property was purchased by him in the year 2014 under a registered sale deed in Document No.4697 of 2014. Thereafter, he is in possession and enjoyment of the same. In the year 2020, when the petitioner wanted to carry out some maintenance work in the house, the respondent caused disturbance to him and further the respondent came to the petitioner's house and put thorny bushes in the place where the work was being done. Subsequently, on 30.06.2022 and on 01.07.2022, the respondent continuously caused disturbance to the petitioner by preventing him to carry out the said maintenance work. Hence, the petitioner was constrained to file a suit in O.S.No.662 of 2022 before the Sub-Court, Trichy, against the respondent for bare injunction. In the suit, he filed an application in I.A.No.2 of 2022 for interim injunction, which was granted by the trial Court and the same was made absolute by its order, dated 27.07.2022.



3.In the meanwhile, the respondent filed an application in I.A.No.4 of 2022 under Order 26 Rule 9 r/w Section 151 C.P.C., for appointment of an Advocate Commissioner to survey the suit property with the help of a Surveyor, in which, a counter was filed by the petitioner objecting the same. On 04.08.2022, the Court below allowed the said application appointing an Advocate Commissioner to survey the land of the respondent and also the suit schedule property and to note down the physical features of the property based on the title deeds. On 18.11.2022, the Advocate Commissioner along with Surveyor came to the suit schedule property and without surveying the respondent's property, wanted to survey the petitioner's property. Therefore, the petitioner made a request to the Advocate Commissioner to survey the suit schedule property, but the Advocate Commissioner made an attempt to survey inside the suit schedule property, which is unwarranted and against the order passed in I.A.No.4 of 2022.

4.Thereafter, the respondent filed another interlocutory application in IA.No.8 of 2023 to permit the Advocate Commissioner to reinspect the suit schedule property and to file a report and also filed another application in I.A.No.7 of 2023 for Police aid, both the interlocutory applications were allowed on 20.03.2023 by directing the Advocate Commissioner to inspect the suit schedule property and also the property of the respondent based on



the title deeds and revenue records and also to note down the physical features of the property and to file a report. Further, Police assistance was also ordered. Aggrieved by which, these Civil Revision Petitions are preferred by the petitioner/plaintiff.

5. On a perusal of the records, it is seen that the report of the Advocate Commissioner is incomplete. The order passed by the Court below, wherein a specific direction was given to the Advocate Commissioner to inspect the suit property along with the Surveyor to measure and note down the physical features of the suit schedule property with police aid.

6. According to the revision petitioner, there is no necessity to inspect inside the house of the petitioner, which is not the scope of warrant. Since this Court thinks that unless the properties are measured according to the title deeds and the revenue records pertaining to the parties, a fair adjudication cannot be reached by in this case. Hence, the contention made by the revision petitioner that there is no necessity for the Advocate Commissioner to reinspect the property cannot be accepted. However, a direction is given to the Advocate Commissioner to inspect the suit property as per the direction given by the Court below without exceeding the scope of the warrant and without causing any inconvenience to the respective



parties. If the Police assistance is required, the Advocate Commissioner can seek the help of the Police.

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7.Accordingly, these Civil Revision Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

07.07.2023

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

- 1.The IV Additional Sub-Court,
Trichy
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P(MD)Nos.1603 and 1606 of 2



K.GOVINDARAJAN THILAKAVADI, J.

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C.R.P(MD)Nos.1603 and 1606 of 2023
and
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