



C.R.P.(MD)No.1084 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.11.2023

Pronounced on : 20.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.1084 of 2023

and

C.M.P.(MD)No.5086 of 2023

1. O.Subbaiah

2. O.Selvaraj

3. P.Kosalai

... Petitioners

Vs.

1. R.Subbulakshmi

2. R.Gurusamy

... Respondents

Prayer : This Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 11.08.2022 made in I.A.No.1 of 2019 in O.S.No.16 of 2016 on the file of the District Munsif Court, Virudhunagar.

For Petitioners : M/s.S.Mahalakshmi

For Respondents : Mr.P.Arun Jayatram



C.R.P.(MD)No.1084 of 2023

WEB COPY

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.1 of 2019 in O.S.No.16 of 2016 dated 11.08.2022 on the file of the District Munsif Court, Virudhunagar, dismissing the application filed under Order 26 Rule 9 C.P.C.

2. The revision petitioners/plaintiffs have filed the suit in O.S.No.16 of 2016, claiming permanent injunction and thereafter amended the plaint and claimed the relief of declaration that a portion measuring 5½ feet west-east and 26 feet north-south available as ABCD in rough plan is belonging to the revision petitioners/plaintiffs.

3. The case of the revision petitioners/plaintiffs is that father of the revision petitioners 1 and 2/plaintiffs 1 and 2 and father-in-law of the third revision petitioner/third plaintiff Ovureddiar has purchased 6 cents of land, vide sale deed dated 24.10.1924, that the said Ovureddiar sold 1620 square feet to one Subbiah Achari, vide sale deed dated 05.10.1964, that in the remaining portion, the said Ovureddiar has been using ABCD portion to reach his vacant land shown as DHFE, that in the ABCD portion, after



C.R.P.(MD)No.1084 of 2023

leaving the common passage portion measuring 7 x 1½ feet on the western side, the remaining portion measuring east-west 5½ feet was owned by him and that since the respondents/defendants, who were having the portion on the west of suit property, had been attempting to construct door steps and other constructions in ABCD portion, the revision petitioners/plaintiffs were constrained to file the above suit for permanent injunction.

4. The main defence of the respondents/defendants is that the revision petitioners/plaintiffs alone are trying to encroach upon the property in Survey No.742/1C without any valid title and causing much nuisance and hardship to the second respondent/second defendant and in order to hide the unlawful activities, they have come forward with the above fictitious suit.

5. It is pertinent to note that the revision petitioners/plaintiffs have earlier filed an application in I.A.No.480 of 2016 for similar prayer for appointing an Advocate Commissioner, but that application was ordered to be dismissed and that the revision petitioners/plaintiffs have then preferred a revision before this Court in C.R.P.(PD)(MD)No.1164 of 2017 and a



C.R.P.(MD)No.1084 of 2023

WEB COPY

learned Judge of this Court, taking note of the objections raised by the respondents/defendants, dismissed the revision.

6. The revision petitioners/plaintiffs, in their affidavit filed in support of this petition, have stated that if an Advocate Commissioner visits the suit property that would show that the respondents/defendants have been attempting to encroach the suit property. The revision petitioners/plaintiffs have sought for appointment of Advocate Commissioner to measure the property with reference to Tamil Nadu Government survey records with the help of Ondappulinayakanur Firka Surveyor and Village Administrative Officer (VAO) and to measure the property.

7. No doubt, as rightly pointed out by the learned counsel appearing for the revision petitioners/plaintiffs, there is no specific bar for filing the second commission's application before the appellate Court if the application filed before the trial Court was already rejected. But in the case on hand, as already pointed out, the revision petitioners/plaintiffs, by pleading the very same aspects, sought for appointment of Advocate Commissioner.



C.R.P.(MD)No.1084 of 2023

WEB COPY

8. As rightly observed by the learned trial Judge, it is not the case of the revision petitioners/plaintiffs that the respondents/defendants have encroached or trespassed into the suit property and even according to the revision petitioners/plaintiffs, the respondents/defendants had attempted to encroach in the suit property.

9. It is seen from the rough plan attached with the plaint, according to the revision petitioners/plaintiffs, DEFH portion is owned by them and to reach that portion they have been using ABCD portion and in that ABCD portion, after taking 1½ feet common passage situated on the west of ABCD portion, the remaining portion in ABCD is owned by them. As rightly contended by the learned counsel appearing for the respondents/defendants, it is for the revision petitioners/plaintiffs to prove that ABCD portion was left out, for using to reach DEFH portion.

10. It is settled law that no Commission can be appointed to show the possession of the suit property. Moreover, it is also settled law that no party can be permitted to gather/collect evidence through the appointment of Advocate Commissioner. As rightly observed by the learned trial Judge, the above application came to be filed only to drag on the proceedings.



C.R.P.(MD)No.1084 of 2023

WEB COPY

Considering the entire facts and circumstances of the case, this Court has no hesitation to hold that the impugned order dismissing the commission application cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

11. In the result, this Civil Revision Petition is dismissed. Since the suit is pending from 2016 onwards, the learned District Munsif, Virudhunagar, is hereby directed to complete the trial and dispose of the suit in O.S.No.16 of 2016, as expeditiously as possible, preferably, within a period of four (4) months from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

20.12.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
csm



C.R.P.(MD)No.1084 of 2023

WEB COPY **To**

1. The District Munsif Court,
Virudhunagar.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(MD)No.1084 of 2023

K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.R.P.(MD)No.1084 of 2023
and
C.M.P.(MD)No.5086 of 2023

Dated : 20.12.2023