



C.R.P(MD)No.1249 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **23.06.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1249 of 2022

and

C.M.P(MD)No.5138 of 2022

Rajeswari

...Petitioner/Petitioner/
Plaintiff

Vs.

1.Subramani

2.Balammal

...Respondent/Respondents/
Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order I.A.No.4 of 2021 in O.S.No. 90 of 2018 dated 21.04.2022 on the file of the District Munsif Court, Devakkottai.

For Petitioner : Mr.J.Barathan

For Respondents : No Appearance



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ORDER

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The present Civil Revision Petition has been filed against the impugned order in I.A.No.4 of 2021 in O.S.No.90 of 2018 dated 21.04.2022 on the file of the District Munsif Court, Devakkottai.

2. Despite notice being served and name being printed in the cause list, there is no representation on behalf of the respondents either in person or through counsel.

3. The petitioner is the plaintiff in O.S.No.90 of 2018 before the District Munsif Court, Devakkottai. The suit has been filed by the petitioner against the respondents for declaratory relief, for a permanent injunction to restrain the respondents from interfering with the peaceful possession of the property and for a mandatory injunction to direct the respondents to deliver the property allegedly encroached by the respondents.

4. The specific case of the petitioner is that the petitioner has purchased two sets of lands adjacent to each other measuring an extent of 11 cents by two separate sale deeds from her vendor vide two separate



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sale deeds, dated 08.03.2004 wherein, the extent of the property that has been conveyed to the petitioner as 11 cents. The respondents appear to have taken a stand that as per the revenue records, the total extent of the land that is available and convey to the petitioner is only 10 cents (0.04.0 ares). It is therefore submitted that the petitioner filed I.A.No.4 of 2021 under the provisions of Order 16 Rule 1 (3) of C.P.C., although by mistake the provision of law has been given as Order 18 Rule 13 of C.P.C.

5. The learned counsel for the petitioner submits that the Trial Court has dismissed the application only on the ground that the petitioner could herself produce the documents without summoning the public officer and only when the application for certified copy is refused, the Court may issue summon to examine the witness.

6. The learned counsel for the petitioner drawn attention to Order 16 Rule 1 (3) of C.P.C wherein, the Court may for sufficient reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than whose names appear in the list referred to in Sub-Rule 1, if such party shows sufficient cause for the



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omission to mention the name of such witness in the said list. It is submitted that the question of giving the details of officer, namely, Village Administrative Officer of Muppaiyur group was not in contemplation at the time of filing of the plaint before the Court. That apart, the learned counsel for the petitioner submits that even otherwise, the Court is having ample power under Order 16 Rule 14 read with Rule 15 and 16 of C.P.C. to summon on its own any person to give evidence or to produce any documents and therefore, any procedural infraction in not following the Rules can be over looked as procedures are hand maids of justice not mistress of law. The learned counsel for the petitioner placed reliance on the Rule 75 of Civil Rules of Practice. The trial Court empowers on a journey to ascertain the truth to render justice to the parties.

7. In this case, the petitioner has purchased the property on 08.03.2004. Admittedly there is a discrepancy between the extent of the property in the schedule to the documents and in the revenue records. This can be explained only by a witness sought to be summoned and not by a mere production of revenue records. Therefore, I do not see any justification in the impugned order rejecting the request of the petitioner.



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8. Considering the above, I am inclined to set aside the impugned order and allow I.A.No.4 of 2021. The learned Distirct Munsif Court, Devakottai issue appropriate summons under the provisions of C.P.C read with Civil Rules of Practice to the concerned Village Administrative Officer, Muppaiyur group to depose evidence in respect of A-Register and other connected records relating to land in S.Nos.125/4, 125/5, 125/9, 125/10 and 125/11.

9. The present Civil Revision Petition stands allowed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

23.06.2023

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

1.The District Munsif Court,
Devakkottai.

2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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