



*C.R.P.(MD)No.1798 of 2022*

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 23.11.2023

CORAM:

**THE HON'BLE MR.JUSTICE K.MURALI SHANKAR**

**C.R.P.(MD)No.1798 of 2022**

**and**

**C.M.P.(MD)No.8004 of 2022**

Kalidas

... Petitioner

Vs.

1. Balamurugan

2. Pagampriyal

3. Alagesan

... Respondents

**Prayer :** This Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records and set aside the fair and decreetal order dated 20.06.2022 in I.A.No.9 of 2021 in A.S.No.36 of 2018 on the file of the Subordinate Judge, Tiruchendur and allow this Civil Revision with costs.

For Petitioner : Mr.G.Prabhu Rajadurai

For R1 & R2 : Mr.M.P.Senthil

For R3 : No appearance



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**ORDER**

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The Civil Revision Petition is directed against the order passed in I.A.No.9 of 2021 in A.S.No.36 of 2018 dated 20.06.2022 on the file of the Subordinate Court, Tiruchendur, dismissing the application for appointment of commissioner.

2. The revision petitioner/plaintiff has filed a suit in O.S.No.130 of 2015 claiming declaration that the suit property is belonging to him and for permanent injunction restraining the respondents/defendants from any manner interfering with the peaceful possession and enjoyment of the suit property. The respondents/defendants have filed their written statement disputing the title canvassed by the revision petitioner/plaintiff and claimed title over the property. The learned trial Judge, after trial, has passed a judgment and decree dated 06.01.2018 dismissing the suit. Aggrieved by the dismissal of the suit, the revision petitioner/plaintiff has preferred an appeal in A.S.No.36 of 2018 and the same is pending on the file of the Subordinate Court, Tiruchendur. Pending appeal, the revision petitioner/ plaintiff has filed an application in I.A.No.9 of 2021 for appointment of commissioner to measure the suit property with the help of the surveyor and file a report and plan. The learned trial Judge, taking note



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of the objection raised by the respondents/defendants, has passed the impugned order dismissing the application. Aggrieved by the dismissal of the commission application, the present revision came to be filed.

3. It is the specific case of the revision petitioner/plaintiff that the suit property was originally belonged to one Meerapen Rotriko, that the revision petitioner/plaintiff purchased the property from one Balamurugan, who in turn purchased the property from one Rengarajan, who in turn purchased the property from one Muthaiah, who in turn purchased the property from the original owner Meerapen Rotriko and that since the revision petitioner/plaintiff has been in possession of the property and the respondents/defendants have been interfering with his possession, he was constrained to filed the above suit claiming the reliefs of declaration and permanent injunction.

4. The revision petitioner/plaintiff in the plaint has specifically furnished the property purchased by him which admeasures 10 cents of land with specific 4 boundaries.

5. The defence of the respondents/defendants is that one Natchiyar Ammal has purchased the property from the said Meerapen Rotriko and



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the respondents 2 and 3/defendants 2 and 3 have purchased western 4.77 cents and eastern 4.78 cents of the properties from the said Natchiyar Ammal and that they have been in possession and enjoyment of the property as the owners of the same.

6. The main contention of the revision petitioner/plaintiff is that since the trial Court has specifically observed that the property was not properly identified, the revision petitioner/plaintiff was forced to file the above application for identifying the suit property.

7. The learned trial Judge, by specifically observing that the respondents/defendants have proved that the sale deed under Ex.A.4 has no connection with the property situated in Survey No.223/1H and that since the revision petitioner/plaintiff has failed to prove that they have purchased the suit property situated in Survey No.223/1H under Ex.A.4, has come to a decision that the revision petitioner/plaintiff is not entitled to get the reliefs of declaration and consequential permanent injunction and dismissed the suit.

8. As rightly contended by the learned counsel appearing for the



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respondents 1 and 2, the revision petitioner/plaintiff cannot be permitted to gather evidence in the appeal stage.

9. Moreover, the learned appellate Judge, by observing that there is absolutely no dispute with regard to the identity of the property and that when the appeal is pending from 2018, the above application came to be filed to cause unnecessary delay, dismissed the application.

10. Considering the entire facts and circumstances of the case and also taking note of the fact that the above application came to be filed after 4 years from the filing of the above appeal and that too for gathering evidence, the impugned order dismissing the application cannot be found fault with. Hence, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

11. In the result, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

**23.11.2023**

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



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**K.MURALI SHANKAR,J.**

csn

**To**

1. The Subordinate Court,  
Tiruchendur.
2. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.

**Order made in**  
**C.R.P.(MD)No.1798 of 2022**  
**and**  
**C.M.P.(MD)No.8004 of 2022**

**Dated : 23.11.2023**