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C.R.P(PD)(MD).No.1034 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.04.2023

Pronounced on : 07.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(PD)(MD)No.1034 of 2018

and

C.M.P(MD)No.4438 of 2018

Babu

... Revision Petitioner/Plaintiff

Vs.

1.Akilambal

2.Selvam

... Respondents/Defendants

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 09.04.2018 in I.A.No.309 of 2018 in O.S.No.318 of 2015 on the file of the Additional District Munsif, Manapparai.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents : No Appearance

ORDER

This Civil Revision Petition is filed against the fair order and decreetal order dated 09.04.2018 passed in I.A.No.309 of 2018 in O.S.No.318 of 2015 on the file of the Additional District Munsif Court, Manapparai.



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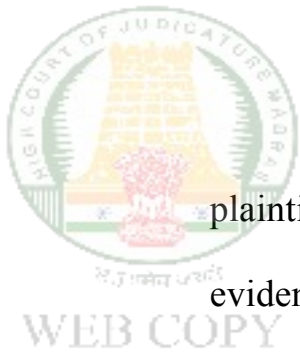
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2. The brief facts of the case:

The revision petitioner is the plaintiff in O.S.No.318 of 2015 on the file of the Additional District Munsif Court, Manapparai. The suit was filed for declaration and injunction. The defendant has filed a written statement and the main suit is pending trial for adducing defendant side evidence. At this stage, the plaintiff has filed petition in I.A.No.309 of 2018 in O.S.No.318 of 2015 under Order 26 rule 9 of the Civil Procedure Code, for appointment of advocate/commissioner to inspect the suit property. That application was resisted by the defendants. After hearing both, the Trial Court has dismissed the petition in I.A.No.309 of 2018 in O.S.No.318 of 2015. Aggrieved by the order of the Trial Court, the revision petitioner approached this Court by way of this Civil Revision Petition.

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

4. The learned counsel appearing for the revision petitioner has contended that the petitioner is the plaintiff and he filed the suit for declaration that he is the absolute owner of the suit B.Scheudle property encroached portion measuring 1 feet x 56 feet and for injunction. The



plaintiff side let in evidence and the suit is pending for defendant side evidence. Already the plaintiff filed a suit in O.S.No189 of 2001, in which, advocate commissioner was appointed. The commissioner has not completely inspected the property as there were karuvelam trees and he cannot able to measure the encroached portion. Now, it is necessary to measure the entire area of the suit property and the defendants' portion, so that it can be facilitated to find out the encroached area. Therefore, the plaintiff filed the petition for appointment of commissioner. The Trial Court has not appreciated the facts and dismissed the petition. The dismissal order has to be set aside and the revision petition may be allowed.

5. On hearing the petitioner side and on perusal of records, it is clear that the revision petitioner has filed the main suit for declaration that he is the absolute owner of the suit property. It is admitted by the plaintiff that the main suit is pending for defendant side evidence. It is also admitted that the plaintiff has already filed a suit in O.S.No.189 of 2001 before the District Munsif Court, Manaparai and in that suit Advocate Commissioner was appointed and he inspected the suit property and filed a report. Now the plaintiff claims that since there were karuvelam trees, the earlier commissioner did not correctly inspect and



measure the property. On perusal of impugned order, the plaintiff had withdrawn the earlier suit after the commissioner report filed. The Trial Court has correctly observed that the present suit is filed in the year 2015 and if the property was further encroached by the defendant after filing of earlier commissioner's report, he can very well plead the same in the plaint or at least at an earlier point of commencement of trial and since the suit is pending for defendant side evidence, the petitioner's claim for appointment of the commissioner is not acceptable. The petitioner has not stated any convincing reason for setting aside the impugned order. There is nothing wrong in passing the impugned order by the Trial Court, which warrants no interference by way of this Civil Revision Petition and thus, this Civil Revision Petition fails and the same is liable to be dismissed.

6. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

07.07.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
vsd



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To

- 1.The Additional District Munsif,
Manapparai.
- 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
C.R.P(PD)(MD)No.1034 of 2018
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