



C.R.P.(MD)No.2469 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.11.2023

Pronounced on : 22.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2469 of 2022

and

C.M.P.(MD)Nos.12093 of 2022 and 11912 of 2023

1. Peter Paul Raj

2. P.Arockia Raj

... Petitioners

Vs.

1. K.Senthil

2. P.Jinod Krishnan

... Respondents

Prayer : This Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 11.11.2022 made in I.A.No.460 of 2022 in O.S.No.1253 of 2019 on the file of the 2nd Additional Subordinate Judge, Madurai and allow this Civil Revision Petition.

For Petitioners : Mr.S.M.Anantha Murugan

For R1 : Mr.K.S.Sreenivasan

For R2 : 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.460 of 2022 in O.S.No.1253 of 2019 dated 11.11.2022 on the file of the II Additional Subordinate Court, Madurai, dismissing the application filed under Order 26 Rule 9 C.P.C.

2. The respondents/plaintiffs have filed the above suit in O.S.No. 1253 of 2019 for declaring the suit pathway as common pathway for door Nos.26A and 26B of West Ponnagaram 8th street, Madurai and for consequential permanent injunction restraining the revision petitioners/defendants and their men from interfering with the peaceful possession and enjoyment and user of the suit pathway and for mandatory injunction directing the revision petitioners/defendants to remove the newly put up cross wall measuring 22 feet x 3 feet and staircase steps in the suit pathway and to remove the northern cross wall measuring 6¼ feet x 5 feet replacing the door way and restore the suit pathway to the original position open to sky.

3. Pending suit, the revision petitioners/defendants have filed the above application in I.A.No.460 of 2022 seeking appointment of Advocate



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Commissioner to inspect the suit properties and adjoining properties and note down the physical features of the suit properties and also to make survey and measurement of the same with the assistance of a qualified surveyor and file a report.

4. The case of the revision petitioners/defendants in the affidavit filed in support of the commission application is that the suit properties and other properties originally belonged to one Palaniyandiya Pillai, who sold the same to one Mariam Gabriel, that the said Mariam Gabriel divided the properties into 26A, 26B, 26C and 26D, that the said Mariam Gabriel has then executed a registered general power of attorney deed in favour of one Uthiriam Pillai in respect of the said properties on 08.05.1979 and that the respondents/plaintiffs and the revision petitioners/defendants have purchased their respective properties from the common vendor.

5. It is the further case of the revision petitioners/defendants that the power agent Uthiriam Pillai executed three sale deeds in respect of 26A, 26C and 26D, totalling 4169.5 sq. ft., that though the said Mariam Gabriel



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was having balance extent of 1713.05 sq. ft., he sold door No.26B for 2156.0 sq. ft., that the revision petitioners/defendants have purchased the properties from P.Alagarsamy subsequent to the purchase of the respondents/plaintiffs, that the respondents/plaintiffs have suppressed and concealed the measurement and actual boundaries of their 26B house property and that therefore, it has become just necessary to identify the true spot and correct measurement and actual boundaries.

6. The respondents/plaintiffs have filed their counter statement raising objections stating that the above application for appointment of Advocate Commissioner was filed for noting the undisputed particulars admitted by the parties and as such, the same would amount to abuse of process of Court, that the above application has been filed after cross-examination of P.W.1 for two days, that since the revision petitioners/defendants have admitted the sale deeds of the other side, which is anterior to that of the revision petitioners/defendants, it is ridiculous to require the Court for measuring the properties of third parties, who are the owners of door Nos.26C and 26 D, that the dispute between the parties is with regard to a strip of pathway $6\frac{1}{4}$ feet East-West and $22\frac{1}{2}$ feet North-South on the



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eastern side of the revision petitioners/defendants' door No.26A, that the respondents/plaintiffs have also alleged the unauthorized staircase and cross wall in the pathway and for the removal thereof and that since there are no grounds for appointment of Advocate Commissioner, the revision petitioners/defendants wanted to complicate the issue and create a ground of evidence for future litigation and as such, the same is liable to be dismissed.

7. As rightly pointed out by the learned counsel appearing for the respondents/plaintiffs, the revision petitioners/defendants have purchased their portion of the properties subsequent to the purchase made by the respondents/plaintiffs.

8. It is pertinent to note that since the respondents/plaintiffs have claimed the reliefs of declaration with regard to the suit pathway and also for mandatory injunction for removal of the cross walls, it is for the respondents/plaintiffs to prove their case.

9. As rightly pointed out by the learned counsel appearing for the respondents/plaintiffs, the averments raised in the affidavit filed in support



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of the commission application with regard to the original ownership and the way in which the title was traced out are not relevant for the present suit. Moreover, according to the respondents/plaintiffs, the dispute is only between the respondents/plaintiffs and the revision petitioners/defendants with regard to a strip of a pathway measuring 6¼ feet East-West and 22½ feet North-South on the eastern side of the revision petitioners/defendants house bearing door No.26A.

10. It is evident from the records that the revision petitioners/defendants have attempted to canvass a case that the said Uthiriam Pillai sold more extent than that what was available at that time and as rightly contended by the learned counsel appearing for the respondents/plaintiffs, the above aspects are no way relevant to the present dispute between the parties and for appointment of Advocate Commissioner. The revision petitioners/defendants have also prayed for a direction to the Advocate Commissioner for measuring the properties situated adjoining to the suit properties and to survey the same with the help of a qualified surveyor. But admittedly, the revision petitioners/defendants have not laid any foundation for seeking survey and measuring of adjoining properties.



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11. It is pertinent to note that when the case was in part-heard stage, the above application came to be filed that too after the lapse of four years.

12. Considering the above facts and circumstances and the reasons canvassed for appointment of Advocate Commissioner, the impugned order dismissing the application cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

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

22.12.2023

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

To

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



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K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in
C.R.P.(MD)No.2469 of 2022
and
C.M.P.(MD)Nos.12093 of 2022 and 11912 of 2023

Dated : 22.12.2023