



C.R.P(MD)No.11 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.02.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.11 of 2023
and
C.M.P(MD)No.106 of 2023

Krishnasamy

... Petitioner/Petitioner/
2nd Defendant

Vs.

1.Sundarraaj

2.Kanagaraj

... Respondents/Respondents/
Plaintiffs

3.Mani

... Respondent/3rd Respondent/
1st Defendant

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 10-10-2022 made in I.A.No.126 of 2018 in O.S.No.287 of 2017 on the file of the District Munsif Court, Lalkudi Trichy District and allow this civil revision petition.

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For Petitioner : Mr.G.Sridharan

ORDER

The present revision petition has been filed by the 2nd defendant in a suit for declaration of title and permanent injunction, challenging an order of rejecting the prayer for appointment of an Advocate Commissioner.

2. The respondents herein as plaintiffs had filed O.S.No.287 of 2017 for the relief of declaration, consequential injunction with regard to 1st item of the suit schedule property. The plaintiffs have further prayed for permanent injunction with regard to 2nd and 3rd item of the property.

3. According to the defendants, the 1st item of the property which is shown as BCDE in the rough sketch filed along with plaint, it does not fall within the property that was purchased by the plaintiffs on 04.02.1999. On the other hand, the said BCDE falls within the property purchased by the 2nd defendant by way of sale deed, dated 07.03.2016. In



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order to prove that BCDE portion falls within the sale deed, dated 07.03.2016, the petitioner had filed an application for appointment of an Advocate Commissioner. The learned trial Judge after going through the submissions made on either side, has dismissed the application on the ground that it is for the plaintiffs to establish their case.

4. I have carefully perused the plaint, written statement, plaint sketch and the pleadings of either of the parties in interlocutory application.

5. It is the specific case of the plaintiffs that BCDE falls within the sale deed, dated 04.02.1999. Therefore, the entire burden is upon the plaintiffs to establish the same. When the burden of proof is upon the plaintiffs, it is unnecessary on the part of the defendant to seek appointment of Advocate Commissioner to prove BCDE portion does not fall within the sale deed of the plaintiffs, dated 04.02.1999. Hence, I find that there is no illegality or infirmity in the order passed by the trial Court.

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6. With the above said observations, this Civil Revision Petition

stands dismissed. No costs. Consequently, connected Civil

Miscellaneous Petition is closed.

13.02.2023

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

1.The District Munsif Court,
Lalkudi,
Trichy District.

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



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R.VIJAYAKUMAR ,J.

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Order made in
C.R.P(MD)No.11 of 2023

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