



C.R.P.(MD)No.3132 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.3132 of 2023
and
C.M.P.(MD)No.16114 of 2023

Kaviyarasu

... Petitioner/
Respondent/
Plaintiff

Vs.

1. T.Prabakaran

2. K.Thirugnanam

... Respondents/
Petitioners/
Defendants

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the impugned order dated 10.10.2023 made in I.A.No.165 of 2023 in O.S.No.176 of 2022 on the file of Principal District Judge, Pudukkottai and set aside the same by allowing this civil revision petition as prayed for.

For Petitioner : Mr.S.Balasubramanian

For Respondents : Mr.D.Ramesh Kumar



C.R.P.(MD)No.3132 of 2023

WEB COPY

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.165 of 2023 in O.S.No.176 of 2022 dated 10.10.2023, on the file of the Principal District and Sessions Court, Pudukkottai, allowing the application for appointment of Advocate Commissioner.

2. The revision petitioner, who is the plaintiff, has filed the suit in O.S.No.176 of 2022 to declare that the suit property is belonging to him and for consequential permanent injunction restraining the respondents, who are the defendants, and their men from in any manner interfering with the revision petitioner's peaceful possession and enjoyment of the suit property and also to declare that the gift settlement deed dated 06.07.2022 executed in pursuance of the Will alleged to have been executed by one Chinnammal is invalid and is not binding on the rights of the revision petitioner.

3. It is seen from the records that the revision petitioner has filed the above suit alleging that the Will was executed in his favour by the said Chinnammal and that the respondents have also filed their written



C.R.P.(MD)No.3132 of 2023

statement taking a stand that the said Chinnammal has executed the Will in favour of the first respondent and after the death of the said Chinnammal, the first respondent has executed a gift settlement deed in favour of the second respondent.

4. As rightly contended by the learned counsel appearing for the revision petitioner, the main dispute to be decided in the suit is about the genuineness of the Will alleged by the parties.

5. Pending suit, the respondents have filed the application in I.A.No. 165 of 2023 for appointment of Advocate Commissioner alleging that the revision petitioner is attempting to demolish his old house, which was situated in the north of the suit property and attempting to make construction by encroaching the suit property. The learned trial Judge, by observing that the respondents have contended that the revision petitioner is going to demolish the building situated in the suit property and the said fact is not at all specifically denied by the revision petitioner, has allowed the application.



C.R.P.(MD)No.3132 of 2023

WEB COPY

6. As rightly contended by the learned counsel appearing for the revision petitioner, the learned trial Judge has misread the averment raised in the affidavit, as if, the respondents have taken a stand that the revision petitioner is going to demolish the property situated in the suit property. But on the other hand, even according to the respondents, the revision petitioner is attempting to demolish the building situated in the northern side of the suit property.

7. The learned trial Judge has specifically observed that local investigation is necessary for the purpose of elucidating the dispute that whether any building was available in the suit property and its existence is to be find out. But as rightly contended by the learned counsel appearing for the revision petitioner, in the suit property itself they have mentioned that RC building is available in the suit property and that the said fact is not disputed by the respondents.

8. It is settled position of law that no party can be allowed to collect or gather evidence through the Advocate Commissioner's report and plan.



C.R.P.(MD)No.3132 of 2023

WEB COPY

9. Considering the entire facts and circumstances and also the reason assigned by the trial Court for appointment of Advocate Commissioner, this Court is inclined to interfere with the impugned order passed by the learned trial Judge.

10. Accordingly, this Civil Revision Petition is allowed and the impugned order dated 10.10.2023 passed in I.A.No.165 of 2023 in O.S.No.176 of 2022 by the learned Principal District Judge, Pudukkottai is hereby set aside. Consequently, connected Miscellaneous Petition is closed. No costs.

30.11.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
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C.R.P.(MD)No.3132 of 2023

K.MURALI SHANKAR,J.

csn

To

1. The Principal District and Sessions Court,
Pudukkottai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

Order made in
C.R.P.(MD)No.3132 of 2023
and
C.M.P.(MD)No.16114 of 2023

Dated : 30.11.2023