



CRP No.173 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.173 of 2024 and
CMP No.856 of 2024

Palayam

... Petitioner

Vs.

G.Ashok

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed in I.A.No.9 of 2023 in O.S.No.50 of 2019, dated 8.12.2023 on the file of the Subordinate Judge, Thiruvallur.

For Petitioner : Mr.K.Balaji

For Respondent /

Caveator : Mr.Gopalakrishnan

ORDER

This Civil Revision Petition has been filed to set aside the order



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passed by the learned Subordinate Judge, Thiruvallur in I.A.No.9 of 2023 in O.S.No.50 of 2019, dated 8.12.2023.

2. The brief facts leading to the filing of Civil Revision petition is as follows:

The petitioner herein is the plaintiff and he filed the above suit against the respondent herein/defendant for declaration that he is the absolute owner of the suit schedule property and for consequential permanent injunction restraining the defendant and his men from interfering with her peaceful possession and enjoyment of the property. The respondent/ defendant has filed written statement and during the course of defendant side evidence, the petitioner has filed an application in I.A.No.9/ 2023 to appoint an Advocate Commissioner to measure the suit property along with surveyor and to note down the physical features of the property as well as the encroachment made by the respondent/defendant thereon. The above application was dismissed by the Trial Court and challenging the above order, this civil revision petition has been filed.



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3. Heard the learned counsel for the petitioner and I have perused the materials on record.

4. On perusal of records, it reveals that the petitioner/plaintiff has filed the above suit for declaration of title over the suit property and also consequential permanent injunction; and in the above suit after filing written statement and framing of issues, trial has been commenced; and during the course of defendant side examination, specifically during cross examination of DW1, the petitioner has filed the above petition for appointment of advocate commissioner to note down the physical features of the suit property as well as the encroachment made by the respondent/ defendant thereon.

5. According to the petitioner/plaintiff, the respondent/defendant has claimed the suit property through the alleged sale deed, however the extent



of the property is differed from one document to another and it is came to the knowledge of the petitioner, only at the time of cross examination of DW1. Therefore, measurement of the property with the help of surveyor by the Advocate commissioner is very essential to prove the clear extent of the property, that has been claimed by the respondent/defendant as owner. Per contra, the respondent/defendant had denied the title of the petitioner/plaintiff over the suit property.

6. In the plaint, the plaintiff has claimed title over the suit property stating that he is the absolute owner of the suit property; and he is in exclusive possession and enjoyment of the suit property by putting up construction thereon. Further, in the suit schedule, the extent of the property claimed by the petitioner/plaintiff is also mentioned. In such circumstances, the petitioner alleged that in the documents filed by the respondent/defendant, the extent of the property belonged to the defendant is differed from one document to another and hence, it is necessary to appoint an advocate commissioner to measure the suit property and to note down the



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physical features of the property. It is to be noted that when there is no dispute with regard to the identification of disputed property/suit property and its extent, appointment of advocate commissioner is unwarranted one. Therefore, the learned Trial judge has rightly dismissed the application and I do not find any error to interfere the same. As such, the civil revision petition is liable to be dismissed.

7. In fine, this Civil Revision Petition is dismissed and the impugned order passed by the Trial Court is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

22.01.2024

Index: Yes/No
Internet: Yes/No
mst

To

The Subordinate Judge, Tiruvallur.



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V.SIVAGNANAM, J.,

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