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C.R.P.(NPD).No.1692 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.1692 of 2020
and C.M.P.No.10621 of 2020

S.Sivaraj

... Petitioner

VS

A.Hussain Basha

... Respondent

Prayer: Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, praying to allow the Civil Revision Petition and set aside the judgement and decreetal order dated 17.10.2019 in I.A.No.32 of 2019 in O.S.No.174 of 2018 in the Court of Addl. Sub Court, Chengalpattu.

For Petitioner : Mr.A.Arumugam

For Respondent : Left

ORDER

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the application filed by the petitioner seeking appointment of Advocate Commissioner to inspect the suit property with the help of Surveyor and to note down the stage of construction in the suit property.



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2. The petitioner herein filed a suit for declaration of title, recovery of possession and also mandatory injunction directing the respondent to demolish illegal construction put up by him over the suit property.

3. According to the petitioner, the suit property measuring to an extent of 800 sq.ft., of land (40' x 20') out of 0.40 cents comprised in S.No.38/1B and it is the case of the petitioner that he is the owner of larger extent of the property in S.No.38/1B and portion of the same was encroached by the respondent and he had also put up a construction thereon. Therefore, he was constrained to file a suit for declaration of title, recovery of possession and mandatory injunction.

4. Pending suit, the petitioner filed an application for appointment of Advocate Commissioner to inspect the suit property with the help of Surveyor and to note down the stage of construction in the suit property. The said application was dismissed by the Trial Court on the ground that it is for the petitioner to prove his title and seek recovery of the same and other incidental reliefs. Aggrieved by the same, the petitioner is before this Court.



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5. The learned counsel appearing for the petitioner submitted that if property is measured by the Surveyor and a report is filed with proper measurement, the same will be useful to decide the exact extent of the encroachment made by the respondent.

6. The petitioner herein filed a suit only in respect of 800 sq.ft., of land in suit S.No.38/1B. According to the petitioner, the respondent encroached the said 800 sq.ft., of land with measurement of 40' x 20' on the north-western portion of the land shown as a shaded portion in the rough sketch appended to the plaint.

7. As rightly pointed out by the Trial Court the possession of the defendant over the said 800 sq.ft., of land in S.No.38/1B is an admitted fact. In such circumstances, there is no dispute with regard to the extent of the encroachment made by the respondent. Therefore, it is for the petitioner to prove his title over the suit property and recover the possession based on his title.



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8. If title of the petitioner is proved, the respondent, who allegedly put up construction in the suit property belongs to the petitioner is bound to remove the same. In such circumstances, the appointment of Advocate Commissioner to inspect the property with the help of Surveyor to find the stage of the construction put up by the respondent is not at all necessary. The Trial Court rightly dismissed the application filed by the petitioner seeking appointment of Advocate Commissioner as unnecessary.

9. Therefore, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

06.03.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm



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To

The Addl. Sub Court,
Chengalpattu.



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S.SOUNTHAR, J.

dm

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