



C.R.P.No.1229 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.1229 of 2024

and

C.M.P.No.6476 of 2024

Manoharan

... Petitioner

Vs.

1.Kutty
2.Neelavathy
3.Rakesh
4.Dillibabu

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed in I.A.No.3 of 2022 in O.S.No.36 of 2022 dated 16.03.2023 by the Court of the Additional District Munsif at Kancheepuram.

For Petitioner : Mr.A.Lakshmi Narasimhan

For Respondents : Mr.R.Anbalagan



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ORDER

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The petitioner as plaintiff filed a suit in O.S.No.36 of 2022 before the Additional District Munsif Court, Kancheepuram seeking injunction against the respondents/defendants restraining them, their men and agents in any way interfering and encroaching the plaintiff's peaceful possession and enjoyment of the suit property. Thereafter, the petitioner filed I.A.No.3 of 2022 seeking appointment of Advocate Commissioner to inspect the suit property along with the Taluk Surveyor to measure the suit property which was dismissed by the Lower Court by order dated 16.03.2023. Against which, the present civil revision petition is filed.

2.The claim of the petitioner in I.A.No.3 of 2022 is that the respondents herein encroached a portion of the western side of the petitioner's property, for which the petitioner issued a legal notice on 15.06.2022 and the encroachment was not removed, hence he filed a suit and also an application to appoint an Advocate Commissioner.

3.The learned counsel for the petitioner referring to the counter



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affidavit filed by the third respondent submitted that the petitioner and the first respondent are cousins, their grandmother Periyathai, wife of Muthuperumal purchased the property from one Murugesu Mdaliar S/o.Nagalinga Mudaliar vide Document No.2257/1944 and she was in possession of the property as an absolute owner. Whereas in the year 1972, the said Periyathai died intestate leaving behind her sons Pachaiyappan and Chithirai, who is the father of the first respondent and the petitioner. They are the only legal heirs to succeed the estate, hence they got the petition mentioned property and enjoying the same along with their siblings. He further submitted that the petitioner resides only in the permissive portion of the first respondent's father Pachaiyappan. He would further submit that it is a property inherited from the grandmother and they are entitled for the property. Since there is some dispute regarding boundary between the petitioner and the first respondent, appointment of Advocate Commissioner is necessary.

4.The learned counsel for the respondents strongly denied the petitioner's submission and submitted that the case projected by the



petitioner in the plaint is totally different. He would submit that the petitioner has to make his case on its own merits and not to take support from the counter filed by the respondents. He further submitted that there is no encroachment and there is no dispute between them, hence the petition filed seeking appointment of Advocate Commissioner is only for the purpose of creating evidence in support of his contention. The petitioner filed a suit for bare injunction for which he has to make out a case on the materials and documents available with him and cannot create documents in support of his contention.

5.Considering the submissions made and on perusal of the materials, it is seen that the Trial Court in the impugned order referring to the averments in the plaint recorded that the petitioner is a resident of No.26, Bajanai Koil Street, Putheri Village, Kancheepuram Taluk, a retired Waterman from Kancheepuram Municipality. His house property belongs to Gramanatham in Old Survey No.105/1 Part, New Survey No.443/10 which was issued by the Special Tahsildar, Natham Nilavarithittam in the year 1994 and the petitioner constructed a small house in front of the above



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said house to an extent of east to west 20 feet and north to south 50 feet approximately in Patta No.219 leaving a 4 feet access to the petitioner's backyard portion on the eastern side. The Special Tahsildar, Natham Nilavari Thittam issued the chitta and manaivari patta. Now the petitioner made a turn around and claims that he has inherited the property from his grandmother and projects as though there is a dispute between the petitioner and the first respondent. The petitioner for the purpose of creating evidence sought for appoint of Advocate Commissioner which the Trial Court had rightly rejected. In view of the same, this Court finds no reason to interfere with the order passed by the Trial Court in I.A.No.3 of 2022 dated 16.03.2023.

6.Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed

16.07.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
cse



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M.NIRMAL KUMAR, J.

cse

To

The Additional District Munsif,
Kancheepuram.

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