



C.R.P.(PD).No.2927 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.2927 of 2021

Natarajan

... Petitioner

vs.

1.Devan

2.Madhu

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order and decree dated 08.11.2019 made in I.A.No.358 of 2018 in O.S.No.53 of 2018 on the file of the District Munsiff Court, Dharmapuri.

For Petitioner : Mr.V.G.Suresh Kumar

For Respondents : Mr.P.Ganesan for R1 and R2

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 measure the property with the help



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of surveyor to note down the physical features.

2. The petitioner herein filed a suit seeking declaration of his title, recovery of possession and mandatory injunction directing the respondents to remove the illegal construction put up by them in the property of the petitioner.

3. The respondents herein filed a written statement stating that they have not encroached the properties of the petitioner and the present suit has been laid only to grab properties of the defendants. It is also stated by the respondents in the written statement that the petitioner failed to mention the exact measurement of the alleged encroachment in his property.

4. The petitioner filed the instant application seeking appointment of Advocate Commissioner to measure the suit property with the help of surveyor. In the affidavit filed in support of petition, it has been clearly stated by the petitioner that the portion marked as “BQPONMLIJK” in the plan to the extent of 866 sq.ft in the suit property is under the illegal



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occupation of the of the defendant.

5. It is the specific case of the respondents that they have not encroached any portion of the petitioner's property. Therefore, there is a dispute with regard to the encroachment in the property of the petitioner and the same can be easily found out by measuring properties of both the parties with reference to the respective title deeds. The Court below dismissed the application on the ground that the petitioner failed to produce any title document to prove his right over the suit property.

6. A perusal of plaint averment would suggest that it is the specific case of the petitioner that the suit properties were ancestral properties and the same was allotted to the petitioner's paternal grandfather Ramasamy Gounder in the family partition dated 10.08.1958. According to the petitioner, after Ramasamy Gounder, petitioner's father Olamana Gounder enjoyed the property and after his death under the oral partition, the suit properties were allotted to his share.



7. Though the petitioner claims right under oral partition, originally the suit properties were allotted to his grandfather in partition dated 10.08.1958 and the same is produced as document No.1 in the plaint. The petitioner has also produced certified copy of the document in the name of respondent's mother as plaint document No.2. In such circumstances, the properties of petitioner family and the respondent can be measured with reference to their respective title documents. The same will minimize the oral and documentary evidence to be letting in by the parties at the time of trial. Therefore, only if the properties of both the parties are measured with reference to the title document, the Court will be in a position to find out whether there are encroachments in the property of the plaintiff's family. Therefore, the impugned order is set aside and the trial Court is directed to appoint an Advocate Commissioner to measure the suit property and property of respondents with the help of surveyor with reference to the title documents of both the parties and file a detailed report with measurements.



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8. Accordingly, this Civil Revision Petition is allowed. No

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costs.

23.02.2024

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

The District Munsiff Court,
Dharmapuri.



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S.SOUNTHAR, J.

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