



CRP NO.1370 OF 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2024

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THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

CRP NO.1370 OF 2023
AND CMP NO.9161 OF 2023

Kalaivani ... Petitioner / Respondent /
Defendant

Vs.

L.Murugasamy ... Respondent / Petitioner /
Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the Fair and Decretal Order dated October 12, 2022 passed in I.A.No.771 of 2021 in O.S.No.80 of 2021 on the file of the District Munsif Court, Avinashi.

For Petitioner : Mr.P.Santhosh
For Respondent : Mr.N.Umapathi

ORDER

This Civil Revision Petition is directed against the Fair and Decretal Order dated October 12, 2022 passed in I.A.No.771 of 2021 in O.S.No.80 of 2021 by the 'District Munsif Court, Avinashi' [henceforth 'Trial Court'] for appointing an Advocate Commissioner to survey,



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measure and note down the physical features of the Suit Property along with an aid of a Surveyor from the Land Survey Department and to submit a report with plan .

2.For the sake of convenience, the parties will be referred to as per their array before the Trial Court.

3.The revision petitioner is the defendant and the respondent is the plaintiff in the Suit. The case of the plaintiff is that he purchased the Suit Property which is an extent of One Acre in S.No.19/2B of Vettuvapalayam Village, Avinashi Taluk, Tiruppur District. The defendant owns an extent of 43 Cents on the western side of the Suit property. It is the further case of the plaintiff that whenever the plaintiff went outside for his day-to-day business purposes, the defendant, taking advantage of his absence, attempted to trespass and encroach upon the Suit Property. Therefore, the plaintiff filed a Suit for bare injunction restraining the defendant, his men, agents, servants and anybody claiming under him from in any manner interfering with the peaceful possession of the plaintiff.



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4.The respondent / defendant filed a written statement denying the right and title of the plaintiff. The respondent / plaintiff has stated that the plaintiff is threatening the defendant and her daughter to sell their property to him and the plaintiff is giving all kinds of trouble to the defendant and her daughter. It is further averred that on November 7, 2020 the plaintiff had damaged the underground pipe in her land and also the plaintiff attacked the defendant and her daughter. In this regard, a First Information Report has also been registered against the plaintiff and his son.

5.After hearing both sides, the Trial Court came to conclusion that there is a boundary dispute between the plaintiff and the defendant and hence, appointment of Advocate Commissioner along with Surveyor is essential in this case and accordingly, allowed the Interlocutory Application on October 12, 2022.

6.The plaintiff filed a Suit for bare injunction stating that he is in possession and enjoyment of the Suit property within the specific four boundaries. The plaintiff did not raise any plea about the alleged



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boundary dispute. Under such circumstances, since the Suit is for bare injunction, this Court is of the view that appointment of Advocate Commissioner along with Surveyor is not necessary. Since the defendant denied the title of the plaintiff, this Court is of the considered view that there is no need to measure out the Suit property. Hence, this Court is inclined to interfere with the order of the Trial Court.

7. Accordingly, this Civil Revision Petition is allowed and the Order dated October 12, 2022 passed in I.A.No.771 of 2021 in O.S.No.80 of 2021 by the learned District Munsif, Avinashi is hereby set aside. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK

To

The District Munsif Court
Avinashi.



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R.SAKTHIVEL, J.

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