



C.R.P.No.4801 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06-12-2024**

CORAM

THE HONOURABLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.No. 4801 of 2024
and C.M.P.No.26862 of 2024

1.E.Muthusamy
2.M.Velmurugan
3.M.Sureshbabu

.... Petitioners

Vs

D.Venkatachalam

.... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India praying to set aside the Fair and Decreetal Order dated 10.09.2024 in I.A.No.3 of 2023 in O.S.No.659 of 2023 on the file of the I Additional District Munsif, Salem.

For Petitioner : Mr.K.Selvaraj

ORDER

This Civil Revision Petition arises against the order of the I Additional District Munsif, Salem in I.No.3 of 2023 in O.S.No.659 of 2023 dated 10.09.2024.

2. O.S.No.659 of 2023 is a suit for declaration that the plaintiff is the absolute owner of the 'B Schedule Property and for delivery of possession of the same. It also seeks for the relief of permanent injunction restraining the



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defendants from interfering with the peaceful possession and enjoyment of the plaintiff over the 'A' Schedule mentioned property. Consequent to these two reliefs, he sought for a mandatory injunction against the defendants to remove the iron fencing that has been put up by the said defendant over the 'B' schedule mentioned property.

3. The claim of the plaintiff is that he is the owner of the 'A' and 'B' schedule mentioned properties. He had purchased the same from one Gopalan on 03.09.2021. However, he could take possession of only 'A' Schedule, since 'B' schedule property has been encroached upon by the defendants. Pending the suit, he took out an application for appointment of an Advocate Commissioner to note down the physical features of the suit property and also to measure the alleged encroached portion under the possession of the defendant. At the time of such inspection, he wanted the Advocate Commissioner to be assisted by a qualified surveyor and the Village Administrative Officer. Hence, in order to measure the 'B' Schedule mentioned property, he took out the aforesaid application.

4. This application was resisted by the defendants on the ground that the application is barred by the principle of *res judicata*. They pointed out that they had filed a suit in O.S.No.602 of 2021, seeking for permanent injunction against the present plaintiff. They alleged that in that suit, an



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application was taken out by the present Plaintiff for appointment of Advocate Commissioner in I.A.No.1 of 2022 and the same had been dismissed by the I Additional District Munsif on 01.09.2023. Therefore, they pleaded a fresh application at the instance of the very same party is not maintainable.

5. The learned Trial Judge, after perusal of the affidavit and petition, came to the conclusion that appointment of an Advocate Commissioner is essential and hence allowed the application. Aggrieved by the same, the present revision at the instance of the defendants.

6. I heard Mr.K.Selvaraj for the civil revision petitioners. Mr.Selvaraj invited my attention to the order passed by the learned I Additional District Munsif in I.A.No.1 of 2022 in O.S.No.602 of 2021 dated 01.09.2023 and urged that as the learned District Munsif had already dismissed the petition, it is not open to him to allow the petition in the subsequent suit.

7. I have carefully considered the submission of Mr.Selvaraj and have gone through the records.

8. I have seen both the orders passed by the learned I Additional District Munsif in I.A.No.1 of 2022 in O.S.No.602 of 2021 and I.A.No.3 of 2023 in O.S.No.659 of 2023. The reason for dismissal of I.A.No.1 of 2022 is



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that, it was a suit for bare injunction and in such a suit, the defendant cannot utilise the office of an Advocate Commissioner to see as to who is in possession of the property or to collect evidence in support of his case. Even at the time of dismissing that petition, the learned District Munsif had pointed out that, if at all the respondent / plaintiff requires to measure the land, it is upto him to file a suit for demarcation of the land through counter claim or by filing a fresh suit.

9. This makes it clear that the learned District Munsif, at the time of dismissing the petition, felt that report of an Advocate Commissioner would not assist him for disposal of the suit in O.S.No.602 of 2021.

10. Turning to the present impugned order, I should point out that the suit is for declaration and recovery of possession of the 'B' schedule mentioned property, which is contiguous to the 'A' schedule mentioned property. In a suit, unless and until the Court is clear about the extent of the property, which is alleged to be under encroachment, it would not be possible for it to deal with the said issue at the time of final disposal.

11. An Advocate Commissioner is appointed to elucidate the matter in issue between the parties in the suit. The matter in issue is, whether the defendants have encroached upon the plaintiff's property and if so, to what



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extent. It is not physically possible for a trial Judge to go over to the property and measure the same. It is for the said purpose that a Civil Court is empowered to appoint an Advocate Commissioner.

12. The issue involved in O.S.No.602 of 2021 and issue involved in O.S.No.659 of 2023 are fundamentally different. I am entirely *ad idem* that the reasoning given by the learned I Additional District Munsif, Salem in Paragraph 9 of the impugned order that the measurements of the alleged encroachments have to be before the Court, as it is the matter in issue in the subsequent suit.

13. In the light of the above discussion, I do not find any reason to interfere with the impugned order. The Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
NC : Yes/No
KST

To

The I Additional District Munsif
Salem.



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V.LAKSHMINARAYANAN, J.

KST

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