



C.R.P.(MD)No.172 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.172 of 2024
and C.M.P.(MD).No.718 of 2024

Vadivel

... Petitioner/Petitioner

Vs.

Narayanan

... Respondent/Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 12.07.2023 made in I.A.No.2 of 2023 in O.S.No.178 of 2020 on the file of the Additional District Munsif Court, Manapparai.

For Petitioner : Mr.G.Sridharan

ORDER

This revision has been filed against the fair and decreetal order dated 12.07.2023 made in I.A.No.2 of 2023 in O.S.No.178 of 2020 on the file of the Additional District Munsif Court, Manapparai.



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2.Suit in O.S.No.178 of 2020 was filed by the respondent herein seeking the relief of demarcating the 'A' schedule property from the 'B' schedule property. The defendant appeared and filed their statement. Pending the trial process a petition was taken out by the plaintiff in I.A.No.2 of 2023, seeking order of appointment of Commissioner to measure the property and divide the same into two equal parts and file the report. That was allowed. Against which, this revision has been preferred expressing a short grievance.

3.Petitioner's side heard. Even though the respondent has been served none appears.

4.Only a short point is arisen for consideration in this matter. The plaintiff averments reads that in the year 1970 the plaintiff and defendant, who are brothers entered into oral partition. The plaintiff was allotted western portion of both the items namely S.Nos.304/9A and 304/9B and the defendant was allotted eastern portion in both the schedule. After the oral partition, now they are enjoying their respective shares.



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5.Since misunderstanding arose between them, the plaintiff filed a suit in O.S.No.239 of 2017 before the learned Principal District Munsif, Manapparai, for declaration and permanent injunction. The defendant admitted that there was a partition and property was divided into eastern and western portion. Eastern portion was allotted to the plaintiff and western portion to him. That suit was dismissed. Appeal was not preferred. On that ground they requested the defendant to demarcate the boundary line. Hence, the suit is filed to measure the property and demarcate the same with the help of the revenue and survey authorities.

6.The defendant appeared and filed the written statement stating that in 1970 there was oral partition. The property was divided into east and west and they are put in separate possession. The earlier suit was dismissed on merits. Since both are in respective shares there is no need for filing the suit.

7.Unnecessarily two suits have been filed by the respondent herein. A simple boundary issue between the parties, who are brothers. Partition is admitted and allotment of portion is also admitted. The only



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point is boundary line. There is no clear indication in the written statement filed by the revision petitioner that boundary itself was fixed either at the time of partition or subsequently. Unnecessarily the respondent herein filed a suit for declaration that was also dismissed. After that only he has filed this present suit, of course for demarcating the boundary. The plaintiff ought to have filed a proper petition before the competent authority by invoking provision under Section 10 of the Tamil Nadu Survey and Boundaries Act, 1923 which reads as under.

10. Power of survey officer to determine and record a disputed boundary.- (1) *Where a boundary is disputed, the survey officer, after making such inquiry as he considers necessary, shall determine the boundary and record it in accordance with his decision. The survey officer shall record in writing the reasons for his decision.*

(2) ***Notice to parties to the dispute and to registered holders of land affected.-*** *Notice of every decision of the survey officer under section 10(1) shall be given in the prescribed manner to the parties to the dispute and other registered holders of the lands the boundaries of which may be affected by the decision."*



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8. That was not done. Even though we can say that the suit is filed by the respondent under Section 10 of the Act, again another mistake has been committed by not adding the Revenue authorities, who are the competent persons to measure the property and fix the boundary line as per Section 10. But instead of that he filed application seeking appointment of Commissioner, again another mistake has been committed to divide the property into two equal shares. Why the respondent is committing continuous mistake is not understandable. If the boundary is fixed, the issue will come to end. Now the grievance of the petitioner is that unnecessarily direction was issued to the Commissioner to measure the property and allotted two equal shares. It is not the duty of the commissioner. I am of the considered view that the order can be modified to the following effect.

9. The commissioner is directed to measure the property with the help of the Taluk Surveyor. The plaintiff is directed to bear the cost of commission, survey and he must take necessary steps as per the procedure by paying the proper cost etc. The boundary must be fixed by measuring the portion east and west in the presence of both the plaintiff



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and defendant. Let the above said commissioner report be filed within a period of two months. On the basis of the commissioner report, the suit itself shall be disposed of immediately, by taking into account the objections if any, filed by the parties, since nothing more for further adjudication in the main suit.

10.This civil revision petition stands disposed of with the above said modifications. No costs. Consequently, connected miscellaneous petition is closed.

19.02.2024

Index : Yes / No
Internet : Yes / No
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To

- 1.The Additional District Munsif, Manapparai.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVAN,J.

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