



C.R.P.(MD)No.279 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.02.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.279 of 2024
and C.M.P.(MD).No.1297 of 2024

Palraj ... Petitioner/Petitioner/Plaintiff

Vs.

Vadivel ... Respondent/Respondent/Defendant

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 09.11.2023 in I.A.No.2 of 2023 in O.S.No.43 of 2023 on the file of the learned District Munsif Court, Palani.

For Petitioner : Mr.J.Madhu

ORDER

This petition has been filed against the order dated 09.11.2023 in I.A.No.2 of 2023 in O.S.No.43 of 2023 on the file of the learned District Munsif Court, Palani.

2.Suit in O.S.No.43 of 2023 was filed by the revision petitioner herein seeking the relief of permanent injunction and for cost. The



C.R.P.(MD)No.279 of 2024

defendant appeared and filed the written statement. Pending the process a petition was taken out by the petitioner in I.A.No.2 of 2023 under Order 26 Rule 9 of CPC for appointment of commissioner with the following facts. On the south of the suit property, the defendant are having lands. But with intention to encroach the property they are making frequent trouble. On 11.05.2022 the petitioner took steps to measure the property with the help of the surveyor. But that was prevented by the respondent. To measure the property and for noting down the physical features he filed the petition.

3.That was resisted by the respondent stating that both are brothers and by virtue of partition deed, dated 22.11.2019 'B' schedule property was allotted to the petitioner and 'A' schedule to him. After that they are in respective portions, effecting mutations in the revenue records etc. But patta was issued jointly including one Thandapani and Chelathal. They are not impleaded as defendants. There is no cause of action for the suit. There is a delay.

4.The trial Court after considering the factual aspects dismissed



C.R.P.(MD)No.279 of 2024

the petition stating that after partition they are in separate possession of their respective shares. So there is no necessity to appoint a commissioner. Against which, this revision has been preferred by the petitioner stating that even though, partition was effected between them, there was no sub division in the revenue records and so boundary lines are made.

5.Heard the petitioner.

6.This Court completely loss to understand the cause of action as well as the reason for the appointment of commissioner. There is clear admission on both side that the property was partitioned between the parties by way of registered partition deed. Now the grievance of the revision petitioner is that the respondent is trying to encroach upon the property taking advantage of the fact that there is no demarcating line between them. If it is so, he ought to have filed application under Section 10 of the Tamil Nadu Survey and boundaries Act to demarcate the boundary lines, on the basis of the partition deed. Without resorting to such exercise, he has filed the suit as if there is attempt on the part of the



C.R.P.(MD)No.279 of 2024

respondent to encroach the property. Even though it is stated that such an effort was made by him on 11.05.2022, it was not substantiated by way of filing proper document. Even now the petitioner is not remediless. He can file the suit one under the provision of the survey and boundaries Act for demarcating the line. That would be proper course to be adopted by the petitioner.

7. For demarcating the line, it may not be proper on the part of the trial Court to appoint the commissioner. That must be undertaken as indicated above as per Section 10 of the Survey and Boundaries Acts, which reads as follows:

“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



C.R.P.(MD)No.279 of 2024

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.”

8.I find absolutely no reason to entertain this petition. Of course liberty is granted to the petitioner to workout his remedy through proper proceedings.

9.With the above said directions, this civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

12.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
TM

To

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



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C.R.P.(MD)No.279 of 2024

G.ILANGO VAN,J.

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C.R.P.(MD)No.279 of 2024

12.02.2024