



C.R.P(MD).No.313 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 13.02.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.313 of 2024

and

C.M.P(MD)No.1432 of 2024

Abdul Samadhu

Represented through his power agent

Mohamed Ikram

... Revision Petitioner / Plaintiff

Vs

1.Syed Meerammal

2.Syed Raviyath

3.Thaslima

4.Ahamed Ibrahim

5.Ahamed Jalabudheen

... Respondents / Defendants 1 to 5

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the decree and judgment dated 18.12.2023 passed by the learned Subordinate Judge, Mudukulathur, in I.A.No.1 of 2023 in O.S.No.26 of 2019 and to set aside the same by allowing the Civil Revision Petition.



C.R.P(MD).No.313 of 2024

For Petitioner : Mr.K.C.Ramalingam

For Respondents : Mr.S.Srinivasaragavan

ORDER

This Civil Revision Petition is filed to call for the records relating to the decree and judgment dated 18.12.2023 passed by the learned Subordinate Judge, Mudukulathur, in I.A.No.1 of 2023 in O.S.No.26 of 2019 and to set aside the same by allowing the Civil Revision Petition.

2. The original suit was filed by the revision petitioner herein for the relief of partition, declaration of various sale deeds as null and void and for cost. The defendants appeared and written statement filed. During the trial process, a petition was taken out by the defendants setting out the following facts. Even in the written statement itself, they have disputed the description of the property. Since the plaintiff has suppressed the availability of house, grove and standing trees etc., a petition was taken by the defendants to bring on record the correct physical features. To note down the physical features and find out the existence of houses, etc. facts, they filed the petition.



C.R.P(MD).No.313 of 2024

WEB COPY

3. That was resisted by this revision petitioner stating that the suit was filed in the year 2019. Later, the defendants remained ex-parte. Later only, they filed an application to set aside the ex-parte order. Only to drag on the proceedings, they filed the petition. The cross examination was also made by them in the light of the physical features available. Pending the trial process, no commission need be appointed.

4. After hearing both sides, the petition was allowed by the trial Court stating that unless the physical features which are available in the property are brought on record, it may not be possible for the Court to know the actual position. .

5. Against the same, this Civil Revision Petition has been preferred. Learned counsel for the petitioner would submit that only for collection of the evidence and that too at the belated stage, this petition was filed seeking appointment of advocate commissioner. On the ground that the proper facts were not appreciated by the trial Court.



C.R.P(MD).No.313 of 2024

WEB COPY

6. Reading of the plaint and the description of properties does not indicate availability of superstructure houses, trees, etc. When there is an issue with regard to the availability of superstructure, standing trees, etc, unless those things are brought on record by appointing an advocate commissioner, it may not be possible for the trial Court to record any finding on that issue. Only for helping the Court, to know about the physical features, commissioner has been appointed. Eventhough, there is a delay on the part of the respondents herein to file the petition. But the fact remains that this petitioner during the course of cross examination, denied the availability of the superstructure, trees, etc.

7. Therefore, I find absolutely no reason to interfere with the order in I.A.No.1 of 2023 in O.S.No.26 of 2019 dated 18.12.2023 passed by the learned Subordinate Judge, Mudukulathur. The contention of the petitioner that it would amount to collection of evidence, is out of place and cannot be appreciated. So the contention is rejected and this revision



C.R.P(MD).No.313 of 2024

petition stands dismissed, by confirming the order of the trial Court. No costs. Consequently, connected miscellaneous petition stands closed.

13.02.2024

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

pnn

To

- 1.The Subordinate Judge, Mudukulathur.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.R.P(MD).No.313 of 2024

G.ILANGOVA, J.

pnn

ORDER
IN
C.R.P(MD)No.313 of 2024
and
C.M.P(MD)No.1432 of 2024

13.02.2024