



C.R.P(MD).No.490 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.490 of 2024

and

C.M.P(MD)No.2546 of 2024

1. Chellaiah @ Paramasivan

2. Chandran @ Durai

3. Arunachalam

... Petitioners / Respondents

Vs

1.Suyambukani Ammal

2.Lingapandi

... Respondents / Plaintiffs

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.178 of 2023 in O.S.No.104 of 2021 on the file of the District Munsif Court, Sathankulam, dated 02.01.2024.

For Petitioner : Mr.Balakrishnan



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ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order passed in I.A.No.178 of 2023 in O.S.No.104 of 2021 on the file of the District Munsif Court, Sathankulam, dated 02.01.2024.

2. A suit in O.S.No.104 of 2021 was filed by the respondent herein seeking declaration, removal of encroachment and for a consequential reliefs. The defendant filed their written statement. Pending the trial process, the present petition is taken up by the revision petitioners in I.A.No.178 of 2023 stating that in the suit II and III schedule of the property, the defendant encroached and planted banana trees. In the written statement they have also stated that they made no encroachment on the property belongs to the plaintiff. Unless a Commissioner is appointed, the actual encroachment made by the parties will not be brought on record.

3. That was resisted by the respondents herein stating that the they are in possession and enjoyment of the property on the basis of the



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revenue records. They have also planted banana trees and if any Commissioner is appointed then, the banana trees will get damaged. That was allowed against which this Civil Revision Petition is preferred.

4. The trial Court has stated that when there is an allegation of encroachment made by the respondents herein, then it must be properly measured, so that documentary and oral evidence can not be avoided. Against the same, this revision has been preferred by the petitioner stating that there is no dispute with regard to the identification of the property and Commissioner cannot be appointed for the purpose of collection of evidence. Apart from that nothing is stated in the ground.

5. Eventhough, there is no issue over the identity of the property, but the fact is that there is an allegation of encroachment by this petitioners in the schedule mentioned property. What portion is encroached can be found out only by taking out measurement. Otherwise the extend of encroachment do not brought on record. When there is a denial on the part of the petitioners that no encroachment was made, unless the property is measured, no finding can be recorded by the trial



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Court. So the order passed by the trial Court requires no interference at all.

6. Accordingly, the order passed in I.A.No.178 of 2023 in O.S.No. 104 of 2021 on the file of the District Munsif Court, Sathankulam, dated 02.01.2024, is confirmed and this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

23.02.2024

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

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To

- 1.The District Munsif Court, Sathankulam.
- 2.Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

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G.ILANGO VAN, J.

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IN
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