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C.R.P.(MD)No.574 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 25/03/2024

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The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P(MD)No.574 of 2024

and

CMP(MD)No.2842 of 2024

1.Arumugam

2.Archunan

: Petitioners/Respondents/
Defendants

Vs.

Rajeswari

: Respondent/Petitioner/
Plaintiff

PRAYER:- Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records pertaining to the fair and decreetal order in IA No.72 of 2023 in OS No.29 of 2023, dated 22/01/2024 on the file of the Principal District Munsif Court, Thanjavur and set aside the same.

For Petitioners : Mr.R.Rajaraman

For respondent : Mr.K.Ganeshamoorthi

O R D E R

This civil revision petition has been filed seeking to set aside the order, dated 22/01/2024 passed in IA No.72 of 2023 in OS No.29 of 2023 by the Principal District Munsif, Thanjavur.



2. The facts in brief:-

The suit in OS No.29 of 2023 was filed by the respondent herein as plaintiff seeking the relief of declaration that the suit properties belong to her absolutely and for recovery of possession and for costs. In the plaint, the suit property is mentioned as 64 cents in the entire extent of 52 Acres in Survey No.99/3. The defendants entered appearance and filed written statement. Pending further process, IA No.72 of 2023 was taken out seeking an order of appointment of Commissioner to note down the physical features and file a report by measuring the property. That was allowed by the trial court.

3. Against which, this civil revision petitioner is preferred.

4. The learned counsel appearing for the petitioners would submit that even in the written statement, they have admitted that they are in possession of 84 cents. So, according to them, there is no necessity for appointment of Commissioner.

5. Heard both sides.



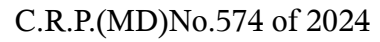
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6.Only short point arises for consideration herein.

7.As mentioned above, the plaintiff says that a portion of the property encroached by the petitioners namely the defendants and that portion must be restored to her. In the schedule of property particulars, she has mentioned 64 cents on the eastern half portion.

8.Now the petitioners/defendants says that they clearly admit that they are in possession of 84 cents of properties. So according to them, no purpose is going to be served by making survey by the Commissioner. On that account, they made objection.

9.Reading of the order passed by the trial court shows that it is the contention on the part of the petitioners that the plaintiff is entitled for only 45 cents in the survey field. The remaining 84 cents belongs to them and they are in possession. To which extent, the parties are entitled, can be found out only at the time of trial. But when there is dispute over the extent of the property, now it is necessary that the measurement must be undertaken on the ground, then only the correct extent can be found out. Only on that account, the Commissioner was appointed by the trial court.



11. In the result, these civil revision petition stands **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index:Yes/No
Internet:Yes/No
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To,

- 1.The Principal District Munsif,
Thanjavur.
- 2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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