



C.R.P(MD)No.1029 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.1029 of 2019

and

C.M.P(MD)No.5671 of 2019

G.T.Durairajan

... Petitioner/Petitioner/
Plaintiff

Vs.

1.R.Padmanabhan

2.P.Praveenkumar

... Respondents/Respondents
Defendants 1 & 2

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 13.11.2018 passed in I.A.No.306 of 2018 in O.S.No.223 of 2014 on the file of the Additional Subordinate Judge, Thanjavur.

For Petitioner : Mr.M.P.Senthil

For Respondents : Mr.S.Sivathilakar



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ORDER

The plaintiff in O.S.No.223 of 2014 on the file of the Additional Sub Court, Thanjavur is the revision petitioner herein.

2. The plaintiff has filed a suit for declaration to declare that the settlement deed, dated 05.11.2013 executed by the first defendant in favour of the second defendant as null and void and for consequential permanent injunction, restraining the defendants from interfering with the peaceful possession and enjoyment of the 'A' schedule property. Pending suit, the plaintiff had filed I.A.No.306 of 2018 seeking to appoint an Advocate Commissioner for the purpose of identifying the property, belonging to the first defendant by virtue of his purchase of 'B' schedule property through a registered sale deed, dated 28.11.1988.

3. According to the learned Counsel appearing for the revision petitioner, the first defendant had settled more extent than what he is entitled to in favour of the second defendant and therefore, the



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possession of the plaintiff is being disturbed. Therefore, in order to properly identify the suit schedule property, an Advocate Commissioner has to be appointed. The said application was resisted by the defendants in the suit. The Trial Court after considering the submissions made on either side, had dismissed the application. Challenging the same, the present revision petitioner has been filed.

4. The learned Counsel appearing for the revision petitioner had reiterated all the grounds mentioned in the revision petition and contended that, since there is a dispute with regard to the extent of land for which the defendants are entitled to, the appointment of Advocate Commissioner to note down the physical features and measure the suit schedule property is very much essential. This Court is not inclined to accept the said contention.

5. A perusal of the prayer in the plaint reveals that, the plaintiff had prayed for declaring a particular settlement deed as null and void and for a permanent injunction, not to disturb his possession over 'A'



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schedule property. For the purpose of declaring a sale deed as null and void or for the purpose of granting permanent injunction to protect the possession of the plaintiff, the appointment of Advocate Commissioner is not necessary. Further, it is not the case of the plaintiff that his property has been encroached upon by the defendants. Therefore, the question of appointing an Advocate Commissioner to identify the suit schedule property does not arise. The Trial Court after considering the factual and legal position, has dismissed the said application. Therefore, this Court does not find any merits in this revision petition.

6. In the result, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

04.04.2024

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



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- 1.The Additional Subordinate Judge,
Thanjavur.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Order made in
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