



C.R.P.(MD)No.1177 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.1177 of 2023
and C.M.P.(MD).No.5692 of 2023

Manonmani ... Petitioner/Petitioner/Defendant

Vs.

Krishnakumar ... Respondent/Respondent/Plaintiff

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating with the Executable order and fair order, dated 17.03.2023 made in I.A.No.1 of 2022 in O.S.No.61 of 2018 on the file of the Sub Judge, Uthamapalayam.

For Petitioner : Mr.R.Suriyanarayanan

For Respondent : No Appearance

ORDER

This civil revision petition has been filed against the Executable order and fair order, dated 17.03.2023 made in I.A.No.1 of 2022 in O.S.No.61 of 2018 on the file of the Sub Judge, Uthamapalayam.



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2.Suit in O.S.No.61 of 2018 was filed by the respondent herein seeking the relief of declaration that the second schedule belongs to him absolutely and for consequential removal of encroachment mentioned as 'ABCD A' in the rough sketch and for cost.

3.The defendant entered appearance and filed the written statement. Pending further process I.A.No.1 of 2022 was taken out by the defendant under Order 26 Rule 9 of CPC seeking appointment of Commissioner, that came to be dismissed by the trial Court. Against which, this revision has been preferred.

4.In the petition it has been stated by the revision petitioner that Advocate Commissioner was appointed in I.A.No.134 of 2018. Report and Plan was also filed by the Commissioner on 20.01.2021. It was closed on 17.02.2021. Though the commissioner was specifically directed to measure the property with the help of a qualified surveyor and with reference of the title documents, he did not do so. Now he wants the commissioner to measure the property with reference to their title documents.



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5.That was resisted by the respondent after hearing both sides. The trial Court dismissed the petition stating that unless the Commissioner report is scrapped, second appointment of commissioner will not lie.

6.The learned counsel for the revision petitioner would submit that unless the properties are measured with reference to the title documents of the petitioner, the actual encroachment that is alleged by him cannot be brought on record. The report of the commissioner shows that the measurement was taken on 30.06.2018 in the presence of both the parties. It has stated by him that measurement was undertaken as per the revenue records. So when the measurement is undertaken on the basis of the revenue records, it was found that the defendant encroached upon the property of the plaintiff.

7.Now, we will go into the statement filed by the revision petitioner. Perusal of the statement shows that the total property originally belongs to the plaintiff's father by name T.V.K.Rengaraj. He died. After his death, family arrangement was made between his legal heirs. In that oral partition, the western 10 cents were allotted to the plaintiff. Eastern 10 cents were allotted to his brother namely Jeya



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Prakash. The defendant purchased 5 cents from Jeya Prakash on 19.01.1994. Even in the sale deed the western boundary is shown as plaintiff's property.

8.It is also stated that no encroachment was also made. So, now the issue to be resolved is measuring the property with reference to the sale deed of the defendant as well as the allotted oral family arrangement. Unless the property is measured with reference to the title document, the matter cannot be resolved.

9.On the sole ground the order dated 17.03.2023 in I.A.No.1 of 2022 in O.S.No.61 of 2018, passed by the trial Court is set aside and there shall be a direction to the trial Court to reissue the commissioner warrant to the very same commissioner with a direction to measure the property with the help of a qualified surveyor, within a prescribed time, not only with reference to the revenue records, but also with regard to the title documents. The remuneration shall be fixed by the trial Court on its discretion.



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

21.03.2024

Index : Yes / No
Internet : Yes / No
TM

To

1. The Subordinate Judge, Uthamapalayam.
2. The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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