



C.R.P.(MD)No.1919 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.09.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.1919 of 2024

and

C.M.P.(MD)No.10896 of 2024

S.Vijayakumar

... Petitioner/Petitioner/Plaintiff

Vs.

1.G.Sankaralingam

2.Sornalatha

3.Subbulakshmi

4.Nachiyar

... Respondents/Respondents/Defendants

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 05.04.2024 in I.A.No.7 of 2024 on the file of II Additional District Munsif Court, Tirunelveli in O.S.No.336 of 2022 on the file of II Additional District Munsif Court, Tirunelveli and allow the present Civil Revision Petition.

For Petitioner : Mr.R.J.Karthick

For Respondents : Mr.B.Gurusankar,
For Mr.T.Selvan for R1.
No appearance for R3 & R4.

* * *



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ORDER

WEB COPY

Heard both sides.

2.The plaintiff in O.S.No.336 of 2022 on the file of the II Additional District Munsif Court, Tirunelveli is the revision petitioner. The suit is for permanent injunction restraining the first defendant from interfering with his right to maintain the suit wall B, C, D, E and F. The first defendant has filed a detailed written statement controverting the plaint averments. The plaintiff filed I.A.No.7 of 2024 for appointing advocate commissioner. The said I.A. was dismissed vide order dated 05.04.2024. Questioning the same, this civil revision petition has been filed.

3.It is not in dispute that this is second round of litigation. The revision petitioner's father had earlier filed O.S.No.832 of 1996 on the file of the I Additional District Munsif Court, Tirunelveli seeking the relief of declaration and mandatory injunction. The first respondent herein namely, Sankaralingam was the sole defendant. The matter came right upto this Court in S.A.No.1125 of 2003. It was disposed of on 20.12.2021 in the following terms:-

“11. In view of the above said discussion, the second appeal is partly allowed and the judgment and decree of the Courts below are



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modified to the following extent:

(i) the plaintiff is entitled to a decree for 1st schedule property to an extent of Southern 1 ½ feet width in E, I wall of the 1st schedule property (as per the Commissioner's report and plan under Exhibit C2) for a declaration of title and for permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the above said property.

(ii) since the plaintiff has not established that any encroachment has been made within the decreed portion, he shall not be entitled to any other relief with regard to the 1st schedule property. The suit is dismissed with regard to the 2nd schedule property.

(iii) In other respects, the judgment and decree of the First Appellate Court are confirmed. No costs."

In the present round, the relief sought for is regarding the right to maintain the suit wall.

4.I will not fault the Court below for having dismissed I.A.No.7 of 2024. The first respondent can have claim only in respect of the E and F portion of the suit wall. He cannot have any say as regards B, C and D portion on the suit wall. By appointing an advocate commissioner, no prejudice will be caused to the first respondent herein.

5.The impugned order is therefore set aside and the civil revision petition is allowed. An advocate commissioner is appointed to inspect and note down



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the features of B, C and D portion of the suit wall. I make it clear that the scope of warrant to be issued to the advocate commissioner by the Court below will exclude E and F portion of the suit wall. No costs. Consequently, connected miscellaneous petition is closed.

20.09.2024

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

The II Additional District Munsif Court,
Tirunelveli.



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G.R.SWAMINATHAN, J.

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