



CRP(MD).No.384 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.02.2024

CORAM :

THE HON'BLE MR JUSTICE G.ILANGOVAN

**CRP(MD).No.384 of 2024 and
CMP(MD).No.1800 of 2024**

P.Paramasivan

... Petitioner/2nd defendant

Vs.

P.Ganesan

... Respondent / plaintiff

PRAYER:- Petition filed under Article 227 of the Constitution of India against the order, dated 25.03.2023 passed in I.A.No.17 of 2023 in O.S.No.73 of 2010 on the file of the Additional District Munsif Cum Judicial Magistrate Court, Sivagiri.

For Petitioner : Mr.T. Thirumurugan

For respondent : Mr.F.X. Eugene

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order, dated 25.03.2023 passed in I.A.No.17 of 2023 in O.S.No.73 of 2010 on the file of the Additional District Munsif Cum



CRP(MD).No.384 of 2024

Judicial Magistrate Court, Sivagiri.

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2. The suit in O.S.No.73 of 2010 was filed by the respondent herein / plaintiff against this petitioner and Municipal Corporation, Puliyangudi Municipality seeking the relief of permanent injunction prohibiting the defendant from collecting house tax. Pending suit, the petition was taken out by the revision petitioner / 2nd defendant in I.A.No. 17 of 2023 seeking an appointment of Advocate Commissioner to note down the physical features that came to be dismissed by the trial Court. Against which this revision is preferred by the 2nd defendant.

3. Heard both sides and perused the materials available on record.

4. The plaint was filed by the plaintiff stating that the suit property belonged to one Isaikimuthu, he sold the property to his father on 29.03.1990 from that date his father was in possession and enjoyment of the suit property. Later, western portion was gifted to the plaintiff and eastern portion to his brother in the year 1991. After that both the plaintiff and his brother put up separate construction in their respective



CRP(MD).No.384 of 2024

portion. Even after that the property tax was assessed in the name of the plaintiff and his brother. The suit was resisted by the 2nd defendant. Pending process, he filed a petition seeking an appointment of Advocate Commissioner to inspect the property in dispute to identify the nature of structure.

5. After completing the recording of evidence the suit is posted for arguments. The attempt on the part of the plaintiff to encroach upon the 2nd item and put up construction can be brought on record only by way of commissioner's report it was resisted by the plaintiff stating that the possession cannot be proved by way of Commissioner's report. Further, there was a huge delay on the part of the petitioner in filing the petition. After hearing both sides, the Trial Court dismissed the petition stating that in order to drag on the proceedings only the present petition has been filed with a huge delay. Aggrieved over the dismissal order, this revision is preferred.

6. This Court has completely at loss to understand the grounds made by the petitioner. It is the specific plea by the plaintiff that the petitioner put up separate house construction in separate portion



CRP(MD).No.384 of 2024

whether the disputed property is in possession and enjoyment of the plaintiff is the only point to be considered by the trial Court. Now, the evidence is already over and posted for arguments only. Without proper reason it has been simply stated in the affidavit that the attempt on the part of the plaintiff to encroach the property and put up construction can be brought on record only by way of appointment of Commissioner it is nothing but bald statement. Since already evidence is recorded on both sides, the case must be decided on its own merits on the basis of the materials produced. No purpose is going to be served appointing an Advocate Commissioner. So, I do not find any reasons to interfere with the order passed by the trial Court.

7. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

16.02.2024

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
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CRP(MD).No.384 of 2024

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The Additional District Munsif Cum Judicial Magistrate Court, Sivagiri.



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CRP(MD).No.384 of 2024

G.ILANGO VAN,J.

Trp

CRP(MD).No.384 of 2024 and
CMP(MD).No.1800 of 2024

16.02.2024