



WEB COPY

C.R.P(MD)No.1411 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 03.07.2024

CORAM

**THE HONOURABLE MR JUSTICE D.BHARATHA
CHAKRAVARTHY**

**C.R.P(MD)No.1411 of 2024
and
C.M.P(MD)No.8398 of 2024**

Samuel

... Petitioner/Petitioner/Plaintiff

Vs.

Jebaselvi

...Respondent/Respondent/
Defendant

Civil Revision Petition is filed under article 227 of the Constitution of India, to set side the fair and decreetal order dated 25.04.2024 passed in I.A.No.78 of 2024 in O.S.No.40 of 2021 on the file of the learned District Munsif Court, Sathankulam.

For Petitioner

:Mr.M.P.Senthil

ORDER

The Civil Revision Petition arises out of the fair and decreetal order of the learned District Munsif, Sathankulam, dated 25.04.2024 in I.A.No.78 of 2024 in O.S.No.40 of 2021.



2. In the said I.A., the petitioner has prayed for appointment of Advocate Commissioner to inspect the suit property and note down the physical features and file a report thereon. However, the trial Court dismissed the petition on the ground that the petitioner cannot file the application to gather evidence and the petitioner has to prove the case by letting in evidence on his own.

3. The learned counsel for the petitioner would submit that when the dispute is a boundary dispute, the trial Court ought to have appointed the Advocate Commissioner. In this case, unless the Advocate Commissioner is appointed and the physical features are noted down, the contention of the rival parties in the main suit cannot be considered and properly decided.

4. I have considered the rival submissions made by the learned counsel for the petitioner and perused the material records of the case.

5. In this case, the suit was filed to declare that the petitioner, who is the owner of the property and for consequential relief. The defendant is defending the case on the ground that the petitioner cannot claim ownership for 5.52 cents, when his vendor has title only in respect of 3.92 cents. Therefore, it could be seen that if the plaintiff case is accepted by the Court



then automatically the relief has to be granted against the defendant. The learned counsel for the petitioner would submit that even if it is assumed the 3.92 cents, if the suit survey numbers mentioned are in acres 3.92 cents, the Commissioner can be appointed to identify the same. Even if the Court agrees upon the survey number which are sold to the petitioner, still the necessity to visit the property and note down the physical features, does not arise in this case. Therefore, I am of the view that the ultimate decision of the trial Court not to appoint the Advocate Commissioner does not call for any interference and accordingly, the civil revision petition lacks merit and the same stands dismissed.

03.07.2024

NCC:Yes/No
Index:Yes/No
Internet:Yes/No
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To
1.The District Munsif Court,
Sathankulam.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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D.BHARATHA CHAKRAVARTHY, J.

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