



C.R.P.(MD)No.1880 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

C.R.P (MD) No.1880 of 2023

and

CMP (MD) No.9429 of 2023

Dahir : Revision Petitioner/
Petitioner/Defendant

Vs.

Sadak Abdullah : Respondent/Respondent/
Plaintiff

PRAYER:- Civil Revision Petition has been filed under section 115 of the Civil Procedure Code, to set aside the fair and decreetal order, dated 03/09/2022 passed in IA No.267 of 2022 in OS No.31 of 2013 on the file of the District Munsif Court, Aranthangi and pass such other of further orders.

For Petitioner : Mr.AL.Kannan

For Respondent : Mr.M.Suresh

O R D E R

This civil revision petition has been filed seeking to set aside the fair and decreetal order, dated 03/09/2022 passed in IA No.267 of 2022 in OS No.31 of 2013 by the District Munsif Court, Aranthangi.



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2. The facts in brief:-

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Suit in OS No.31 of 2013 is filed by the respondent herein seeking the relief of declaration and for permanent injunction. The defendant appeared and filed the written statement also. Pending the process, a petition was taken out by the respondent herein in IA No.267 of 2022 seeking an order to appoint the Commissioner with the following averments:-

"To prove that the facts mentioned in the written statement, the Commissioner must be appointed with the help of the Village Administrative Officer, to measure the property with reference to the revenue records.

3.That was resisted by the petitioner herein stating that the suit was filed, on 08/03/2013 pending for about 11 years. He was set *ex-parte*. Later, it was set aside. Now the suit is pending for further cross examination by recalling PW7. To drag on the proceedings only, the above said petition is filed.

4.The trial court, after hearing both sides, dismissed the petition. Against which, this civil revision petition is preferred.



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5.The learned counsel appearing for the petitioner would submit that simply because the petition filed at the fage end of the trial process, it ought not to have been dismissed. It is stated in the grounds that the plaintiff purchased the property in Survey No.75/10 measuring about 3-1/2 Ares from one Chinnasamy. Later, subdivision was made. The plaintiff sold the property measuring about 15-1/2 cents to one Subramanian comprised in Survey No.75/B13. But he is enjoying 18 Acres. It is comprised in Survey No.75/10. So the plaintiff is in possession of the property measuring about only 13-1/2 Ares in Survey No.75/10A on the northern side namely in the suit property, the revision petitioner have lands about 13-1/2 Ares. That portion was handed over by the plaintiff, on the basis of the sale deed. But later, he refused to execute the sale deed. Later only, the sale agreement was executed by him, on 07/10/2008 in respect of 13-1/2 Ares. So if the Commissioner is appointed, it will throw light upon the issue between the parties.

6.Heard both sides.

7.As stated in the preamble portion of the order, lengthy facts are set out in the main revision, but anything of this nature are not mentioned in the petition



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seeking appointment of Commissioner. It has been simply stated that to prove the contents raised in the written statement, appointment of Commissioner is required.

8. Even if we take that those facts are involved in the suit, it must be decided on the basis of the evidence let in by the parties. There is no issue with regard to the identification of the property. So the contention on the part of the petitioners that the plaintiff has handed over the possession of 13-1/2 Ares on the northern side of the suit property in pursuance of the sale arrangement, I am at loss to understand as to how the Commissioner will make out a report concerning this issue. As stated in the grounds, the original survey number was sub-divided into various survey numbers. That can be proved by way of producing the document.

9. Now the trial process is over and posted for argument, at this length of time this is nothing, but an attempt on the part of the petitioner to collect evidence to sue the evidence. So, this cannot be permitted. I find no reason to entertain this revision.



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10.In the result, this civil revision is **dismissed**.

No costs. Consequently connected Miscellaneous Petition
is closed.

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07/03/2024

Index:Yes/No
Internet:Yes/No
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To,

The District Munsif,
Aranthangi.



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G.ILANGOVAN, J

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