



CRP(MD).No.1274 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2024

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)[PD]No.1274 of 2014

S.Sulaiman

: Petitioner

Vs.

1.P.Ramaiah Konar (Died)

2.Syed Sirajudeen

3.Sheik Chinthamadar

4.R.Muthulakshmi

5.R.Esakki

6.R.Subramani

7.R.Santhanam

: Respondents

[Respondents 4 to 7 are brought on record as LRs of the deceased 1st respondent vide common order dated 31.07.2023].

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order passed in I.A.No.28 of 2013 in O.S.No.105 of 2012 on the file of District Munsif-cum-Judicial Magistrate Court, Cheranmahadevi dated 25.02.2014.

For Petitioner : Mr.M.P.Senthil

For Respondents 2 to 5 : No appearance

For Respondent 6 & 7 : Mr.J.Parekh Kumar



CRP(MD).No.1274 of 2014

ORDER

WEB COPY The instant Civil Revision Petition has been filed against the dismissal order passed in the Commission Application.

2.The learned Trial Judge had dismissed the Commission Application on the ground that the petitioner / defendant has moved the application only with the intention of collecting the evidence.

3.At this juncture, the learned Counsel for the revision petitioner had drawn the attention of this Court in respect of the counter statement filed by the respondent / plaintiff, wherein while objecting the Commission Application has stated that the prayer sought for is only to measure the petition mentioned property ignoring the suit property which is not maintainable. To put it in other words, it is the submission of the respondent / petitioners that both the suit property as well as the property mentioned in the written statement has to be simultaneously measured. However, while perusing the Commission Application, the petitioner / defendant has mentioned so many other properties in the petition. Therefore, though this Court is of the firm view that the order of the Trial Court is to be interfered, it must have been restricted only to the property mentioned in the plaint as well as in the written statement.



CRP(MD).No.1274 of 2014

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4. In view of the above reason, this Court allows the Commission Application only to measure the property in the plaint and the written statement along with the assistance of the Surveyor.

5. In the result, this Civil Revision Petition is allowed, directing the learned trial Judge to appoint a Commissioner to comply with the direction made hereinabove. There shall be no order as to costs.

09.02.2024

Index : Yes / No

Internet : Yes / No

MR



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CRP(MD).No.1274 of 2014

To

1.The District Munsif-cum-Judicial Magistrate Court,
Cheranmahadevi.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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CRP(MD).No.1274 of 2014

C.KUMARAPPAN, J.,

MR

C.R.P(MD)No.1274 of 2014

09.02.2024