



C.R.P.(MD)No.1960 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.09.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.1960 of 2022

and

C.M.P.(MD)No.9005 of 2022

Samuel Aron

... Petitioner / Petitioner / Plaintiff

Vs.

Devavaram (Died)

1.Paul Abraham

2.Paul Manickam

3.D.Thenmani

4.D.Thenpooranam

5.D.Then Kasthuri Thayammal ... Respondents/ Respondents / Defendants

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow the civil revision petition by setting aside the fair and decreetal order passed in I.A.No.1 of 2022 in O.S.No.488 of 2012 on the file of the 1st Additional District Munsif Court, Tirunelveli dated 01.08.2022.



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For Petitioner : Mr.H.Arumugam
For Respondents : Mr.Ananth C.Rajesh
for R1, R2 & R4
: Mr.M.S.Jawharlal
for R3

ORDER

Heard the learned counsel on either side.

2. The plaintiff in O.S.No.488 of 2012 on the file of the first Additional District Munsif Court, Tirunelveli is the revision petitioner herein. The petitioner herein filed I.A.No.1 of 2022 for appointing an advocate commissioner to conduct local inspection and to find out the extent of the encroachment said to have been committed by the defendants. I.A was dismissed on 01.08.2022. Questioning the same, this civil revision petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of grounds of revision petition and called upon this Court to set aside the impugned order and grant relief as prayed for.



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4. I am not swayed by the said submission. The petitioner had originally filed the suit for permanent injunction. In the said suit, he filed a petition for appointing an advocate commissioner. It was dismissed. Challenging the same, he filed C.R.P(PD)(MD)No.1544 of 2014. It was also dismissed on 15.07.2021. According to the petitioner, during the pendency of the suit, the defendants committed trespass and also put up construction. He therefore applied for amending the plaint and the suit prayer. Now the petitioner seeks declaration, recovery of possession and mandatory injunction and the said IA was allowed. Thereafter, I.A.No.1 of 2022 was filed for appointing an advocate commissioner. If the plaintiff succeeds in establishing his title, recovery of possession as well as mandatory injunction will follow as a matter of course. To establish one's title, an advocate commissioner need not be appointed. The court below has given convincing reasons for dismissing IA. Interference is not warranted.

5. The Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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G.R.SWAMINATHAN, J.

rmi

To:

The Additional District Munsif Court, Tirunelveli.

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