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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.09.2024

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P(MD)No.2122 of 2024
and
C.M.P(MD)No.12095 of 2024

Gandhimathi ... Petitioner / Petitioner / 3rd Defendant

Vs.

Kalaiselvi ... Respondent/ Respondent/ Plaintiff

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 09.08.2024 passed in I.A.No.2 of 2024 in O.S.No.408 of 2014 on the file of the Additional District Munsif Court, Karur and allow the present Civil Revision Petition.

For Petitioner : Mr.V.Balaji

ORDER

Heard the learned counsel for the revision petitioner.

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2.The revision petitioner is figuring as the third defendant in O.S.No.408 of 2014 on the file of Additional District Munsif Court, Karur. The suit is for mandatory injunction directing the defendants to remove the mobile phone tower. In the said suit, the third defendant filed I.A.No.2 of 2024 for appointment of Advocate Commissioner. The said IA was dismissed vide order dated 09.08.2024. Questioning the same, this Civil Revision Petition came to be filed.

3.The learned counsel for the revision petitioner reiterated all the contentions set out in the memorandum of grounds of revision and grant relief as prayed for. He also relied on the decision reported in ***[2021] Supreme (Mad) 2627 (Kasidarmam Panchayat Union & Others Vs kasidharmam Ayyavazhi Thirukovil)*** and ***AIR 2023 MADRAS 210 (Govindan Vs Malaichamy)***. The learned counsel was at pains to point out that the plaintiff has come out with a specific case that the cell phone tower is located in particular survey number and that the defendant wants to bring it to the notice of the Court below that the cell phone tower is not located in the survey number mentioned by the plaintiff.

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4.I am not swayed by the said submissions. I wanted to know from the learned counsel for the revision petitioner if cell phone tower is located in the land belonging to the defendant. The answer is in the affirmative. Merely because the survey number has been wrongly mentioned that would not make out a case for appointing an Advocate Commissioner. The suit is of the year 2014. IA has been filed after a gap of 10 years.

5.I am more than satisfied that this is not a case where there is any dispute regarding the identity of the suit property. The order passed by the Court below is sustained.

6.This Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

05.09.2024

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

MGA

To

The Additional District Munsif Court,
Karur.

C.R.P(MD)No.2122 of 2024

05.09.2024

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