



C.R.P.(MD)No.2106 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.2106 of 2022
and C.M.P.(MD).No.9721 of 2022

Rajesh Kanna

... Petitioner/Petitioner/Defendant

Vs.

Bala Murugan

... Respondent/Respondent/
Plaintiff.

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order passed in I.A.No.5 of 2022 in O.S.No.122 of 2020 on the file of the District Munsif Court, Sivakasi, dated 07.07.2022.

For Petitioner : Ms.P.Jessi Jeeva Priya

For Respondent : No Appearance

ORDER

This civil revision petition has been filed to set aside the order passed in I.A.No.5 of 2022 in O.S.No.122 of 2020 on the file of the District Munsif Court, Sivakasi, dated 07.07.2022.



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2. Even though the respondent was served none appears on behalf of him. His name was also printed in the cause list.

3. Suit in O.S.No.122 of 2020 was filed by the plaintiff namely the respondent herein seeking the relief of permanent injunction restraining the defendants not to interfere in their peaceful possession and enjoyment, otherwise than under due process of law. The suit property is mentioned as shop bearing No.211/2, wherein a shop by name Thangam Traders is functioning.

4. The defendant entered is appearance and filed written statement. In the course of trial process, he filed a petition seeking appointment of Commissioner to note down the physical features and violation of licence, conditions. That came to be dismissed by the trial Court stating that it is an attempt by the petitioner to collect evidence. Against which, this revision has been preferred.



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5.The learned counsel for the revision petitioner would submit that the said unit is functioning in the residential area and there is violation of the licence also. To ascertain the above said position only, the appointment of commissioner was sought for. The trial Court was of the opinion that if there is a violation of conditions of licence that can be proved by examining the concerned authority. Without making any steps for examination of the authority, attempt has been made by the petitioner for appointment of commissioner, it is not proper.

6.Even though query was raised by this Court to the counsel as to how the Commissioner can find out the violation, according to him, distance cannot be measured by the authority.

7.I find no reason to entertain the revision. But during the course of the trial process, if the trial Court finds that the evidence of the licensing authority is not helpful to decide the issue and measure the distance between the shop and the neighbouring residential area, the trial Court on its own motion can appoint a commissioner.



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8. With the above said observation, this civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.03.2024

Index : Yes / No
Internet : Yes / No
TM

To

1. The District Munsif, Sivakasi.

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



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G.ILANGOVA,J.

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