



C.R.P.(MD) No.2379 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.11.2024

CORAM

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.2379 of 2024

and

C.M.P.(MD) No.13487 of 2024

V.Balakrishnan
S/o.Late.Sri.Vanniakonar

... Petitioner

Vs.

V.Ramalingam
S/o.Late.Sri.Vanniakonar

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 28.06.2024 passed by the III Additional Subordinate Court, Madurai, in I.A.No.1 of 2024 in O.S.No. 724 of 2024.

For Petitioner : Mr.H.Arumugam

For Respondent : Mr.K.Jagadeesan

ORDER

This Civil Revision Petition has been filed against the order dated 28.06.2024 passed in I.A.No.1 of 2024 in O.S.No.724 of 2024 on the file of the III Additional Subordinate Court, Madurai.



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WEB COPY 2. The revision petitioner is the defendant in the above suit in O.S.No.724 of 2024. The respondent, as the plaintiff, filed the above suit for declaration of title, recovery of possession, and mandatory injunction. Along with the plaint, the respondent/plaintiff filed I.A.No.1 of 2024 for the appointment of an Advocate Commissioner to note down the physical features of the suit properties and to ascertain the extent of encroachment made by the revision petitioner/defendant. The trial court passed the impugned *ex parte* order dated 28.06.2024, appointing an Advocate Commissioner to inspect the suit properties and to note down the boundaries and physical features. Aggrieved by this, the present Civil Revision Petition has been filed.

3. The learned counsel for the revision petitioner/defendant would submit that there is no necessity for appointing an Advocate Commissioner without issuing notice to the revision petitioner/defendant, and that the finding of the trial court in the impugned order, that the revision petitioner/defendant, in his reply notice, agreed to survey the property, is incorrect. As such, in the said reply notice, the revision petitioner/defendant agreed to survey only the second schedule of the



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properties, which is not the subject matter of the dispute, and hence, he prays for setting aside the impugned order passed by the trial court in the said application.

4. On the other hand, the learned counsel for the respondent/plaintiff would submit that the appointment of an Advocate Commissioner to note down the physical features and measure the same with the qualified surveyor and the Village Administrative Officer would be helpful in resolving the dispute in the suit, and therefore, the trial court has rightly allowed the said application, which calls for no interference.

5. Heard on both sides. Records perused.

6. On perusal of the records, it is seen that in the reply notice, it has been categorically mentioned that the revision petitioner/defendant agreed to measure the second schedule of the properties mentioned in the partition deed, which is not the subject matter of the suit. Therefore, this Court deems it fit to set aside the impugned order and remit the case back to the trial court to try the above application afresh. Accordingly, the impugned order is set aside, and the matter is remitted back to the trial



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court to try the above application afresh, by giving sufficient opportunities to the parties to put forth their contentions and dispose of the said application on merits and in accordance with law, within a period of one month from the date of receipt of a copy of this order.

7. In the result, this Civil Revision Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

18.11.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order/Non-Speaking Order

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Copy To:

The III Additional Subordinate Judge,
Madurai,
Madurai District.



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K.GOVINDARAJAN THILAKAVADI, J.

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