



C.R.P(MD)No.1727 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 31.07.2024

CORAM

THE HONOURABLE MR JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P(MD)No.1727 of 2024

and

C.M.P(MD).No.9999 of 2024

P.Nattudurai

... Petitioner

Vs.

1.M.M.Samy

2.S.Karuppathal

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.282 of 2023 in I.A.No.287 of 2021 in O.S.No.150 of 2017 dated 10.08.2023 on the file of the District Munsif Court, Ottanchathiram.

For Petitioner

: Mr.T.Thirumurugan

ORDER

This civil revision petition is directed against the order of the learned District Munsif, Ottanchathiram, dated 10.08.2023 in I.A.No.282 of 2023 in I.A.No.287 of 2021 in O.S.No.150 of 2017.



C.R.P(MD)No.1727 of 2024

2. O.S.No.150 of 2017 is filed by the petitioner /plaintiff for declaring that he is the owner of the suit properties and for consequential permanent injunction. The property is described in the schedule to the plaint, which is Survey No.367 /2. Earlier the defendants in the suit had filed an application in I.A.No.287 of 2021 to inspect the suit property and to file a report which was allowed by the trial Court. In the very same Interlocutory Application, the present application in I.A.No.282 of 2023 is filed to direct the Advocate Commissioner to inspect the adjacent property, namely, Survey No.367 /1 also, which, according to the petitioner/plaintiff, also belongs to him and the defendants are also claiming right over the said property.

3. Mr. Thirumurugan, learned counsel for the petitioner, would submit that even in the connected writ petition filed by the defendants in W.P(MD).No. 13405 of 2015, they had claimed for surveying both the lands together that is Survey Nos.367/1 and 367/2. He would submit that on a pleading of the parties, it can be seen that unless 367/1 is also measured and inspected, the dispute cannot be adjudicated effectively.

4. I have considered the said submission made by the learned counsel for the petitioner.



C.R.P(MD)No.1727 of 2024

5. On a perusal of the records, the plaintiff is tracing title in respect of Survey No.367/2 and has filed a suit for declaration and permanent injunction, in respect of Survey No.367/1 is not made as a subject matter of the suit. The defendants also are setting up rival title in respect of Survey No.367/2. Therefore, I am not able to agree with the learned counsel for the petitioner that the Commissioner should be permitted to measure the other property also. So long as no relief is claimed with reference to Survey No.367/1, the prayer of the petitioner cannot be countenanced. As a matter of fact, if any other evidence have to be let in regarding the identity of Survey No.367/1 or the boundary of Survey No.367 /2 or their physical features, it is always open for the petitioner /plaintiff to let in independent evidence. When the trial Court has considered the fact that the Commissioner can inspect only the suit property, I am unable to interfere with the said order. Accordingly, finding no merits, the Civil Revision Petition is dismissed, however, with the above liberty, as observed by this Court. No costs. Consequently, connected Miscellaneous Petition is closed.

31.07.2024

NCC:Yes/No
Index:Yes/No
Rmk



WEB COPY



C.R.P(MD)No.1727 of 2024

D.BHARATHA CHAKRAVARTHY, J.

Rmk

To
The District Munsif, Ottanchathiram.

**C.R.P(MD)No.1727 of 2024
and
C.M.P(MD).No.9999 of 2024**

31.07.2024