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CRP.No.281 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2025

CORAM:

THE HONOURABLE Ms.JUSTICE P.T.ASHA

CRP.No.281 of 2025
and CMP.No.1840 of 2025

Semmalai

... Petitioner / Petitioner / Defendant

Vs

Periyasami

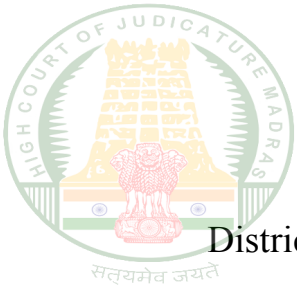
...Respondent / Respondent / Plaintiff

Prayer :- Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order dated 02.08.2024 in I.A.No.314 of 2024 in O.S.No.25 of 2023 on the file of the Principal District Munsif Court, Kallakurichi, and thereby allow the CRP.

For Petitioner : Mr.R.Bharath Kumar
Mr.R.Eswaran

ORDER

This civil revision petition has been filed by the defendant in O.S.No.25 of 2023 on the file of the Principal District Munsif Court, Kallakurichi, challenging the order dated 02.08.2024 passed by the learned



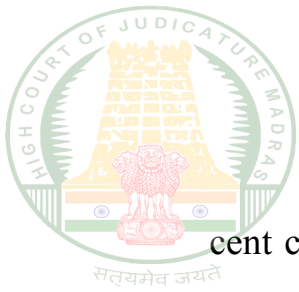
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District Munsif in I.A.No.314 of 2024 in O.S.No.25 of 2023.

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2. The respondent/plaintiff had filed the suit for permanent injunction in O.S.No.25 of 2023 seeking to restrain the revision petitioner/defendant from interfering with petitioner's peaceful possession and enjoyment of the suit schedule property. Pending this suit, the revision petitioner has filed an application in I.A.No.314 of 2024, seeking leave of the Court to appoint an Advocate Commissioner to note down the physical features of the second item of suit schedule property with the help of a surveyor and to file a report.

3. The ground on which the revision petitioner had filed the said application in I.A.No.314 of 2024 is that the second item of property namely Survey No.18/10 measuring 00087.5 sq.mtr., is a joint family property, in respect of which, a partition had taken place on 18.03.2014. In this partition, the respondent/plaintiff was allotted the northern portion of the house site measuring an extent of 87.5 sq.mtr.and southern portion of house site measuring an extent of 87.5 mtr., was allotted to the petitioner. The plaintiff/respondent instead of mentioning the extent of the second item of suit property as 87.5 sq.mtr., had wrongly mentioned the extent as $0.02 \frac{3}{4}$



cent constructed house, which is over and above of what was allotted to the respondent. It is further pleaded that the house comprised in Survey No.18/10 was measuring 00087.5 sq.mtr., and to the north of it is situate Survey No.8/7D measuring east-west 32 feet, south-north 6 ½ feet, thus totalling an extent of 208 sq.ft., which was encroached by the plaintiff.

3. It is the contention of the revision petitioner/defendant that he had come to know about this wrong measurements only in January '2023 when his portion of land was measured. The revision petitioner would also contend that the present suit is only a counter blast to the revision petitioner requesting the respondent/plaintiff to remove the encroachment of 208 sq.ft., in Survey No.8/7D, which is his portion of patta lands. He would further submit that the statement of the respondent/plaintiff that the second item of suit schedule property was exclusively situated in Survey No.18/10 is not true, as the same also finds place in Survey No.8/7D, which is the revision petitioner/defendant's patta land. Suppressing these facts, the plaintiff/respondent had instituted the suit in O.S.No.25 of 2023. Therefore, to ascertain the extent of encroachment by the respondent/plaintiff, the present interlocutory application in I.A.No.314 of 2024 was filed by the revision petitioner, to appoint an Advocate Commissioner. This application

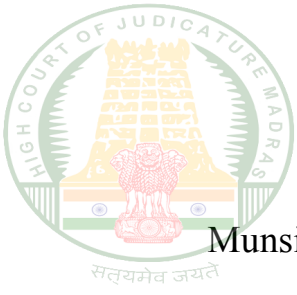


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was dismissed by the trial Court, challenging which, the petitioner has come forward with the present revision petition.

4. Heard Mr.R.Bharath Kumar, learned counsel appearing for the revision petitioner.

5. The suit in question is one bare injunction. Pending the suit, an application in I.A.No.314 of 2024 was filed for appointment of Advocate Commissioner by the defendant/revision petitioner. The said application has been dismissed on the ground that the suit is one for a mere injunction and not for a declaration. The plaintiff has come to Court pleading that the defendant is attempting to disturb his possession and enjoyment over his portion of the suit property in second item, however he has chosen to file the suit for bare injunction and there is no claim for recovery of possession. By filing this application, the plaintiff is attempting to gather evidence regarding possession. It is also seen that a patta has been granted, which pre-supposes that a survey must have been conducted. Therefore, the present application appears to be only an after thought and an attempt to gather evidence. The suit being one for injunction, the plaintiff has to only prove possession. It is in this circumstances, the order passed by the learned Principal District



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Munsif, Kallakurichi, in I.A.No.314 of 2024 in O.S.No.25 of 2023 does not require any reconsideration or warrants interference by this Court.

6.To conclude, the civil revision petition is dismissed.

Consequently, connected miscellaneous petition is closed. No costs.

06.02.2025

To:

- 1.The Principal District Munsif
Kallakurichi
- 2.The Section Officer
VR Section
High Court, Madras.



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P.T.ASHA,J.,

ds

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