



C.R.P.(MD)No.268 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2025

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

C.R.P.(MD)No.1923 of 2021

and

C.M.P.(MD)No.10350 of 2021

Vaigai Karuppu

...Petitioner

Vs.

R.Muthuraman

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, praying to call for the records relating to Fair and Decreetal order dated 29.09.2021 passed in I.A.No.3 of 2021 in O.S.No.89 of 2019, on the file of the District Munsif Court, Theni and set aside the same.

For Petitioner : Mr.J.Anandkumar

For Respondent : No Appearance



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ORDER

This petition has been filed seeking to set aside the order dated 29.09.2021 passed in I.A.No.3 of 2021 in O.S.No.89 of 2019, on the file of the District Munsif Court, Theni

2.Learned Counsel for the petitioner would submit that the petitioner is the defendant in the suit in O.S.No.89 of 2019. The respondent / plaintiff filed a suit for injunction as against the petitioner. In the said suit, the petitioner filed I.A.No.3 of 2021, under Order 26 Rule 9 of CPC, for appointment of Advocate Commissioner to ascertain the developments made by the petitioner in the suit schedule property. The said application came to be dismissed. Challenging the same, the present Civil Revision Petition came to be filed.

3.Learned Counsel for the petitioner would submit that the petitioner entered into a sale agreement with the respondent and the respondent handed over possession on the same day of the agreement and allowed the petitioner to develop the property. Thereafter, the respondent filed vexatious a suit for injunction. Though title is in possession of the petitioner, the petitioner entered



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into the property based on the sale agreement. In order to prove the possession and developments made in the suit schedule property, the petitioner filed I.A.No.3 of 2021 and the same was dismissed, which is not tenable and requires interference by this Court. In support of his contention, learned Counsel for the petitioner relied upon a decision of this Court in the case of ***Saraswathy Vs. Viswanathan reported in 2002 (2) CTC 199.***

4.Though the name of the respondent is printed in the cause list, none appears. Considering the pendency of this Civil Revision Petition, this Court is inclined to dispose of the same based on the materials available on record.

5.The facts in the present case are not in dispute. Admittedly, the petitioner / defendant filed I.A.No.03 of 2021, for appointment of Advocate Commissioner under Order 26 Rule 9. The petitioner claims that he entered into a sale agreement with the respondent and thereby, he developed the property. Hence, he has made an application for appointment of Advocate Commissioner to ascertain the developments in the suit schedule property. Such a prayer is impermissible. The possession cannot be decided by the Advocate Commissioner's report. Even if there are developments in the property, whether the developments are made with the consent of the respondent is a matter for



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trial and that cannot be decided by the Advocate Commissioner's report. Hence, the trial Court has rightly dismissed the said application and the same need not be interfered with.

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

26.06.2025

Internet: Yes/No

Index: Yes/No

MR



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To

- 1.The District Munsif Court,
Theni.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI, J.

MR

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