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CRP.No.3764 of 2017

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.10.2022

CORAM:

**THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI**

C.R.P.No.3764 of 2017  
and  
C.M.P. No. 17529 of 2017

C. Gandhi  
Petitioner

..

Versus

S. Sarathi

.. Respondent

**Prayer:** Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 11.07.2017 passed in I.A. No.334 of 2017 in O.S. No.107 of 2011 on the file of the District Munsif Court, Ambattur.

For Petitioner : Mr.R. Ramesh

For Respondent : Mr. V. Karthikeyan

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**ORDER**

This Civil Revision Petition has been filed seeking to set aside the fair and decreetal order dated 11.07.2017 passed in I.A. No.334 of 2017 in



O.S. No.107 of 2011 on the file of the District Munsif Court, Ambattur.

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2. The petitioner herein is the defendant and the respondent herein is the plaintiff in the original suit.

3. For the sake of convenience, the parties are referred to the rank cited in the original suit.

4. The case of the petitioner is that the plaintiff/respondent herein filed the suit in O.S. No.107 of 2011 before the Trial Court seeking for the relief of perpetual injunction against the defendant/petitioner herein from interfering with his peaceful possession and enjoyment of the suit property. During the pendency of the suit at the stage of Cross examination of P.W.1, the defendant/petitioner herein has filed an application in I.A. No.344 of 2017 before the Trial Court under Order 26 Rule 9 CPC for appointment of an Advocate Commissioner along with Taluk Surveyor to note down the physical features of the petitioner property and also find out the encroachment made by the plaintiff and to measure the suit property. The Trial Court after hearing both sides, dismissed by order dated 11.07.2017 the said application stating that the application has been filed to gather



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evidence on behalf of the defendant/petitioner herein which cannot be entertained. Being aggrieved by the aforesaid order, the defendant/petitioner herein has filed the present Civil Revision Petition to set aside the same.

5. The learned counsel for the petitioner would submit that the plaintiff/respondent herein purchased the suit property adjacent to the property of the defendant/petitioner herein. Originally, the vacant land to an extent of 2274.3 Sq.ft, is comprised in S.No.866/5 which has been subdivided into S.No.566/5E and S.No.566/5H in view of the purchase of separate plots in the suit property in favour the plaintiff and the defendant. The plaintiff's property situated in S.No.866/H and the the defendant's property situated in S.No.866/E. The plaintiff without ascertaining his property, he has put up a construction in the defendant's property in S.No.866/E. Hence it is necessary to measure the suit property belonged to the plaintiff and the defendant with the help of Taluk Surveyor to find out the encroachment made by the plaintiff/respondent herein in the suit property. Without considering the aforesaid facts and circumstances of the case, the Trial Court has dismissed the prayer of the defendant by order



dated 11.07.2017 which is liable to be set aside.

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6.The learned counsel for the respondent would submit that the plaintiff has filed suit for permanent injunction against the defendant not to disturb his possession and enjoyment of the suit property. If there is any right over the suit property, the defendant ought to have filed a suit for declaration and possession or any of the other relief whereas he has filed an application for appointment of Advocate Commissioner to note down the physical features during the stage of cross examination of P.W.1. Hence, the Trial Court has rightly dismissed the application after hearing both sides.

7. Heard the learned counsel appearing for both sides and perused the materials available on record.

8.On a perusal of the records, it is seen that originally, the suit property to an extent of 2274.6 is comprised in S.No.866/5. Both parties have purchased the plots comprised in Old S.No.866/5 and in view of the division of plots, the survey number has been divided accordingly with respect to their respective plots situated in the main Survey Number 866/5.



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While obtaining New Patta, the sub division of main Survey Number shall be reflected therein. It is stated that while the plaintiff's property situated in S.No.866/H, he has put up construction in the S.No.866/5E where the defendant's property is situated. While being so, the plaintiff has filed the suit for bare injunction against the defendant. However, the allegation of the defendant is that the plaintiff has encroached his property by putting up superstructure in it. Further, both the parties did not produce any oral and documentary evidence before the Trial Court in the disposal of the aforesaid application to prove their side. Hence, before disposal of the suit, there is necessity to ascertain whether the plaintiff has put up construction either on the survey number belonged to the plaintiff or defendant after verifying their patta issued by the Revenue authorities since the plaintiff prays for relief of Permanent Injunction against the defendant and the defendant makes allegation of encroachment against the plaintiff. Under such circumstances, it is necessary to note down the physical features of the suit property belonged to the plaintiff and the defendant by appointing an Advocate Commissioner to ascertain the survey numbers belonged to the parties and to grant proper relief to the parties concerned to end the dispute arose between the parties. Hence, this Court is inclined to allow



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this petition by setting aside the findings of the Trial Court. The Trial Court is hereby directed to appoint an Advocate Commissioner for inspection of suit property pertaining to survey numbers belonged to both parties and for filing of report accordingly. The liberty is given to either party to file their objection over the report of Advocate Commissioner. After full fledged Trial, having considered the oral and documentary evidence put forth by both parties, The Trial Court shall dispose the Original suit in O.S. No.107 of 2011 within a period of Six months from the date of receipt of Advocate Commissioner Report.

9. In the result, the Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed if any. No costs.

**27.10.2022**

Lbm

Index : Yes/No

Speaking Order : Yes/No



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Copy To:

1. The District Munsif Court, Ambattur.
2. The Section Officer, V.R.Section  
High Court, Madras.



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**T.V.THAMILSELVI, J.**

Lbm

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