

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P (PD) NO.2319 OF 2017
AND CMP NO.10943 OF 2017

P.Perumal

... Petitioner

Vs.

Shanmugam

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 23.03.2017 passed by the learned II Additional District Judge, Salem, in I.A.No.97 of 2017 in O.S.No.40 of 2016.

For Petitioner : Mr.L.Mouli

सत्यमेव जयते
ORDER

WEB COPY

This Civil Revision Petition is directed against the order dated 23.03.2017 passed in I.A.No.97 of 2017 in O.S.No.40 of 2016 by the learned II Additional District Judge, Salem.

2. The suit is filed for return of advance amount paid towards purchase of the property, in which, the petitioner herein / defendant has contended that as per the agreement, the property is offered for sale, but the plaintiff insists on pathway contrary to the agreement. In the said suit, the petitioner / defendant has filed an application for appointment of Advocate Commissioner.

3. The suit is for return of advance amount based on an agreement entered into between the parties. The issue of pathway whether there was a cart track in the suit property, as per the agreement, or the defendant has agreed to provide exclusive cart track, has to be determined in the suit. Further, the appointment of Advocate Commissioner is not necessary. The Trial Court has rightly observed that whether the said cart track is provided for the suit properties or it belonged to the temple or it is a common pathway, the same will be decided during trial and for that purpose, an Advocate Commissioner is not required. There is no discrepancy in the order passed by the Trial Court. The Trial Court has rightly found that in a suit for return of advance, appointment of Advocate Commissioner is unwarranted.

4. Therefore, the order dated 23.03.2017, passed in I.A.No.97 of 2017 in O.S.No.40 of 2016, by the learned II Additional District Judge, Salem is hereby confirmed and accordingly, the Civil Revision Petition is dismissed No costs. Consequently, connected civil miscellaneous petition is closed.

31.07.2017

Index : Yes/No

Internet : Yes/No

TK

To

The II Additional District Judge
Salem.



WEB COPY

M.GOVINDARAJ, J.

TK



C.R.P (PD) NO.2319 OF 2017

WEB COPY

31.07.2017