

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(PD) NO.2781 OF 2017

K.Velusamy

... Petitioner

Vs.

R.K.Saminathan

... Respondent

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India against the judgment and decree dated 04.01.2017 made in I.A.No.655 of 2016 in O.S.No.128 of 2013 on the file of the III Additional District Munsif, Salem.

For Petitioner : Ms.P.Veena Suresh

सत्यमेव जयते

**ORDER**

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This Civil Revision Petition is directed against the dismissal of the interlocutory application filed for appointment of Advocate Commissioner.

2. The petitioner is the first defendant in the suit. The suit was filed by the respondent/plaintiff for delivery of possession and injunction.

3. The title of the suit property is claimed through a will. The contention of the petitioner / first defendant is that there was a Panchayat Muchilika, through which the properties were allotted to them. Since the respondent/plaintiff refused to come for partition, they have filed another suit in O.S.No.232 of 2013, which was dismissed, against which, an appeal was preferred and the same is pending in A.S.No.42 of 2013. Therefore, the application was filed to appoint an Advocate Commissioner to measure the properties mentioned in the will and the common properties separately. The Trial Court has found that the suit is one for delivery of possession and mesne profits and the same is now in the fag end of the trial. Therefore, the application for appointment of the Advocate Commissioner is not sustainable.

4. It is well settled that in a suit for delivery of possession and mesne profits, it is not necessary to appoint an Advocate Commissioner at

the fag end of the trial, since such appointment will lead to collection of evidence and protraction of proceedings. Peculiarly, when the petitioner has filed a separate suit on the basis of a Panchayat Muchilika, he can seek the relief to measure those properties only in his suit. He cannot mingle the properties derived by the respondent through the will and the common properties mentioned in Panchayat Muchilika, and further seek for appointment of Advocate Commissioner. Such act will further delay the proceedings and thereby, will adversely prejudice the plaintiff. Further, it will lead to collection of evidence and as rightly found by the Trial Court, it will amount to protract the proceedings, when the trial of the suit is about to be completed. Therefore, the prayer sought for in the Civil Revision Petition merits no consideration.

5. Accordingly, the Civil Revision Petition stands dismissed. No costs.

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Index : Yes/No  
Internet : Yes/No  
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M.GOVINDARAJ, J.

TK

To

The III Additional District Munsif  
Salem.



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