

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 25.06.2019

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANUCRP(PD) (MD)No.949 of 2019andCMP(MD)No.5407 of 2019

G.T.Durairajan

... Petitioner/Petitioner/Plaintiff

vs.

1.R.Neelambal@ Neelavathi

2.P.Gopi

... Respondents/Respondents/
Defendants 1 & 2

PRAYER: Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 13.11.2018 made in I.A.No.305 of 2018 in O.S.No.192 of 2014 on the file of the Additional Subordinate Judge, Thanjavur.

For Petitioner : Mr.M.P.Senthil

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 13.11.2018 made in I.A.No.305 of 2018 in O.S.No.192 of 2014 on the file of the Additional Subordinate Judge, Thanjavur.

2. The facts of the case is that the petitioner is the plaintiff in the suit and the respondents are the defendants. The suit has been filed for declaration and consequential relief of permanent injunction against the respondents. Pending suit, I.A.No.305 of 2018 was filed by the petitioner for the appointment of Advocate Commissioner to measure and identify the properties in correlation to the sale deed dated 12.12.1959 stood in the name of the 1st respondent with the help of qualified surveyor and direct them to file a detailed report with plan within the stipulated time fixed by the Court. The court below after considering various factors has rejected the claim of the petitioner. Hence, the petitioner is before this Court by way of this Civil Revision Petition.

3. The learned counsel for the petitioner would only contend that the appointment of advocate commissioner is very much necessary to sort out the error pointed out in the suit mentioned properties between the petitioner and the respondents. The Court below without appreciating the same has dismissed the case of the



petitioner. Hence, he prays for setting aside the order challenged in this Civil Revision Petition.

4. Heard the learned counsel for the petitioner and also perused the materials available on record.

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5. A perusal of the findings recorded by the trial Court at paragraph No.6, it would reveal that the learned trial Judge culled out the fact that there is no reason to appoint advocate commissioner for the reason that even according to the petitioner he himself admitted that he is in possession of A schedule property. When that being the actual position, the question of identification and measurement of property would not arise. That apart, the suit relief is only to declare the settlement deed of the second respondent dated 04.08.2013 as null and void. Under such circumstances, the learned trial Judge cannot be expected to go beyond the scope of the relief sought by the petitioner. Therefore, the learned trial Judge has rightly observed that the appointment of advocate commissioner would not serve any purpose for deciding the crux of the issues rather it would consume more time and it would derail the main issue raised by the petitioner. If it is the case of the petitioner that the first respondent has actually got more lands in the UDR than she is actually entitled to as alleged by the petitioner, he is not remediless but he has to approach the revenue officials to correct the same with supporting documents. Therefore, this Court finds no merits in the contention of the petitioner and this Civil Revision Petition is liable to be dismissed.

6. Accordingly, this Civil Revision Petition is dismissed. It is made clear that the Court below shall dispose of the suit as expeditiously as possible, on its own merits and in accordance with law without being influenced by any of the observations made hereunder. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To
The Additional Subordinate Judge,
Thanjavur.

+1 CC to Mr.M.P.SENTHIL, Advocate (SR-71891[F] dated 27/06/2019)
CRP(PD)(MD)No.949 of 2019
and
CMP(MD)No.5407 of 2019
25.06.2019