



WEB COPY

C.R.P(MD)No.942 of 2019 and

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

C.R.P (MD)No.942 of 2019 and
CMP (MD) .No.5383 of 2019

Lakshmi

... Petitioner/Petitioner/Solde Defendant

Vs.

Sivagangai Samasthanam Devasthanam
rep. through its Manager,
Aranmanai Campus,
Sivaganga Town, Sivaganga District.

... Respondent/
Respondent/Plaintiff

PRAYER: This Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decreetal order passed in I.A.No. 582 of 2018 in O.S.No. 131 of 2017, on the file of Principal District Munsif Court, Manamadurai, dated 12.04.2019.

For Petitioner : Mr.R. Gowrishankar
For Respondent : Mr. M. Karthikeya Venkatachalapathy
for Mr. S. Madhavan

ORDER

This Civil Revision Petition has been filed challenging the order passed by the Court below dismissing the I.A.No.582 of 2018 in O.S.No. 131 of 2017, on the file of Principal District Munsif Court, Manamadurai, dated 12.04.2019.

2. The said Interlocutory Application was filed for the purpose of appointment of an Advocate Commissioner, by the revision petitioner. The Court below dismissed the said application stating that the respondent / plaintiff in their plaint averments had admitted that the defendant had made a construction in the suit property and also residing in the said property. Therefore, there is no necessity to appoint an Advocate Commissioner to inspect and measure the suit property. Since it is no way connected to the dispute raised in the main suit. Therefore, the Court below has dismissed the said application for appointment of Advocate Commissioner.



3. The revision petitioner contended that the respondent herein has filed the suit with description of property, which is entirely different from the details of the property of the petitioner herein. Further, the revision petitioner, contended that even in his plaint, the respondent herein has not stated the survey number and other relevant details and he has shown the suit property as vacant land in the suit property.

4. According to the revision petitioner, to correctly identify the suit the property and Survey and prepare sketch as per revenue records and Registered documents, on the side of the petitioner, the present Interlocutory Application was filed for an appointment of Advocate Commissioner. He further contended that S.No.49/2, classified as "Natham Promboke" as per the revenue records and the petitioner family is being in possession for years. Therefore, without considering these fact, the Court below dismissed the Interlocutory Application for appointment of an Advocate Commissioner. Hence, he prayed to set aside the order passed by the Court below.

5. On the other hand, the respondent / plaintiff submitted that the present property belongs to the Devasthanam and some other suit was filed against one of the other co-occupant of the property and the said suit was dismissed on merits. There is no dispute on the boundaries in the present suit with regard to possession of the property with the revision petitioner herein. In these circumstances, there is no need for appointing an Advocate Commissioner. The Court below has rightly dismissed the Interlocutory Application.

6. I have heard the learned counsel appearing on either side and perused the materials available on record.

7. Admittedly, the possession of the property is with the revision petitioner herein and the present property is situated in the Grama Natham and the S.No. 49/2 has not been mentioned in the suit schedule and in order to correctly identify the property, he filed an application for appointment of an Advocate Commissioner. If the suit schedule properties is not described in the schedule of the plaint properly, it is for the plaintiff to establish his case about the boundaries and if it is not established by the plaintiff, the Court will consider the suit on merits.

8. The petitioner has filed an application for appointment of an Advocate Commissioner for the purpose of identifying the suit property in S.No.49/2 and prepare a sketch on the request of the defendant, is not warranted. Further, if at all this property is classified as "Grama Natham" it is for him to



establish before the Court below and contest the case.

9. Such being the case, there is no need for this Court to interfere with the order passed by the Court below and accordingly, this Civil Revision Petition is dismissed. Since the suit is of the year 2017, this Court directs the Court below to dispose of the suit at the earliest point of time. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

Sub Assistant Registrar (CS)

trp

To

The Principal District Munsif Court, Manamadurai,

+1 CC to M/s.R.GOWRISHANKAR, Advocate (SR-87361[F] dated 18/09/2019)

+1 CC to M/s.S.MADHAVAN, Advocate (SR-87127[F] dated 17/09/2019)

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KM/ (23.10.2019) 3P 4C