



WEB COPY

C.R.P(MD)No.1459 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.1459 of 2019 and
CMP(MD).No. 7746 of 2019

Paramasivan

... Petitioner

Vs.

1.Sudalaimaniammal

2.Selvi

3.Venkata Subramanian

... Respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decreetal order dated 25.06.2109 in I.A.No.1 of 2019 in O.S.No. 311 of 2018 on the file of I Additional District Munsif, Thirunelveli.

For Petitioner : Mr.S. Muthalraj
For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order, dated 25.06.2019 passed in I.A.No.1 of 2019 in O.S.No. 311 of 2018 on the file of I Additional District Munsif, Tirunelveli.

2. When the matter came up for hearing 28.08.2019, this Court ordered notice through Court as well as privately to the respondents. Service against respondents have been completed and their names are also printed in the cause list. But, none appeared on behalf of the respondents.

3. The learned counsel appearing for the revision petitioner / defendant would submit that the present suit has been filed by the respondents / plaintiffs for the relief of permanent injunction restraining the defendant his men, agent, servant etc., from interfering with the peaceful possession and enjoyment of the suit property. In a suit for permanent injunction, there is no need for appointment of an Advocate Commissioner. Only in suit for declaration the appointment of Advocate Commissioner used to be ordered to demarcate the boundaries, identify the properties etc., But, in the present case, the suit has been filed only for permanent



injunction and hence, there is no need for appointing Advocate Commissioner to survey the land with the help of the Surveyor. In this regard, he has relied on the Judgment of this Court reported ***in 2018(5) MLJ 447 (Maruthai Nattar and others Vs. Ayyavu and others)***. According to the petitioner, the Court below below has wrongly interpreted and applied the principle laid down by this Court in the above said case and therefore, the appointment of Advocate Commissioner is liable to be set aside.

4. Admittedly, the suit has been filed only for permanent injunction and not for declaration. It is for the respondents / plaintiffs to prove their case about the possession of the property and right to retain the possession, etc., by adducing documentary evidence or by way of oral evidences. The appointment of Advocate Commissioner for the purpose of surveying the land is not required, since it is not the case for declaration. Based on the materials produced by the parties, the Court below has to decide whether the plaintiffs are entitled to permanent injunction or not. The appointment of Advocate Commissioner in the present case, will lead only to collection of additional evidence to fill up the lacuna of the plaintiffs case.

5. In such of the view, this Court is inclined to interfere with the order passed by the Court below and accordingly, the order passed in I.A.No. 1 of 2019 in O.S.No.311 of 2018 on the file of the I Additional District Munsif, Tirunelveli is set aside.

6. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

To

The I Additional District Munsif, Thirunelveli.

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