

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2021

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

**C.R.P.(PD) No.269 of 2019
and C.M.P.No.2086 of 2019**

Ganesan

...Petitioner

Vs.

1.Krishnaveni

2.Kamalam

3.Ramalingam

...Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, as against the fair and decreetal order dated 06.12.2018 passed by the Principal District Munsif, Namakkal in I.A.No.382 of 2018 in O.S.No.235 of 2011.

For Petitioner : Mr.M.Murali

For Respondents : Mr.Pradeep Kumar

ORDER

This Civil Revision Petition is filed, as against the fair and decreetal order dated 06.12.2018 passed by the Principal District Munsif, Namakkal in I.A.No.382 of 2018 in O.S.No.235 of 2011.

2.The petitioner filed a suit in O.S.No.235 of 2011, claiming the relief of recovery of possession in respect of the suit property. The suit property is a land, measuring an extent of 0.78 ½ cents in Survey No.129/2, 129/4 in Nadukkombai Village, Sendamangalam Sub-District in Namakkal District. The respondents entered appearance and filed written statement.

3.When the matter was pending trial, the petitioner filed an application in I.A.No.382 of 2018 under Order 26 Rule 9 of CPC, to appoint an Advocate Commissioner to inspect and measure the suit property and also file a report along with the plan.

4.Reasons stated for appointment of an Advocate Commissioner is that the petitioner's grand father left 1.57 acre of land. One, Marappa Gounder is entitled for 78½ cent and balance 78½ cent belong to the petitioner. This 78½ cent land has to be measured and delivered to the petitioner. Therefore, a petition in I.A.No.382 of 2018 has been filed by the petitioner. The said petition was opposed by the respondents before the trial Court. The learned trial Judge after considering the rival submissions and the

materials placed, dismissed the petition on 06.12.2018 on the ground that the petitioner has to prove his title over the suit property and when the title over the suit property itself is in question, the petitioner has come forward with a prayer to measure the property and the petition is filed only to drag on the proceedings. As against the dismissal order, the present Civil Revision Petition is preferred.

5.The learned counsel for the petitioner reiterated that the appointment of Advocate Commissioner is necessary for granting the relief of recovery of possession. No prejudice will be caused to the respondents if the Advocate Commissioner is appointed.

6.This was opposed by the learned counsel for the respondents on the ground that the respondents are in possession and enjoyment of the suit property for more than 20 years. The trial had commenced in this case and P.W's.1 and 2 have been examined fully and the case is pending for cross examination of P.W.3. In the aforesaid circumstances, the appointment of Advocate Commissioner is not necessary.

7.Considering the rival submissions, it is seen from the plaint that the suit in O.S.No.235 of 2011 was filed for recovery of possession in respect of the suit property. Specific extent in specific Survey numbers are given in the plaint. The issue to be contested in this case is that whether the petitioner has title over the suit property and whether he is entitled for recovery of possession. It appears that no dispute with regard to the identification of the suit property. In the aforesaid circumstances of the case, this Court is of the considered view that the appointment of an Advocate Commissioner is absolutely not necessary and the petitioner has to prove his case and title over the suit property by production of oral and documentary evidence. This Court finds no reason to differ from the view taken by the learned trial Judge. Moreover the suit was filed in the year 2011 and the petition for appointment of Advocate Commissioner was filed only in the year 2018, after the commencement of the trial. Now, almost the plaintiff's side evidence is nearing completion.

8.On the facts of this case and the nature of the relief claimed, the appointment of Advocate Commissioner is not necessary.

This petition is filed with delay and this Court is not inclined to entertain this petition and the order dated 06.12.2018 in I.A.No.382 of 2018 in O.S.No.235 of 2011 passed by the learned District Munsif, Namakkal, is hereby confirmed and this Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is closed.

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25.08.2021

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No

To
1.The District Munsif, Namakkal,
2.The Section Officer
VR Section
High Court of Madras.



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C.R.P.(P.D).No.269 of 2019

G.CHANDRASEKHARAN.J,

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