



WEB COPY



C.R.P.(PD).No.2446 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.2446 of 2021

and

C.M.P.No.18529 of 2021

R.Parthasarathy

.. Petitioner

Vs.

Ammu

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 15th April 2021 passed in I.A.No.1 of 2019 in A.S.No.14 of 2018 on the file of the learned Sub-Ordinate Judge of Tiruvallur.

For Petitioner : Mr.J.R.K.Bhavanantham

ORDER

Challenge in this Revision is to the order of the appellate Court made in I.A.No.1 of 2019 in A.S.No.14 of 2018.



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2. The said application was filed by the appellant seeking appointment of Advocate Commissioner to note down the physical features with specific instructions to fix the suit property within four boundaries as mentioned in the sale deed dated 16.11.2017 marked as Ex.A6 in the suit.

3. The plaintiff sued for declaration of his title and permanent injunction. The suit was dismissed by the trial Court on the finding that the plaintiff has not proved the exact identity of the suit property. Pending appeal as against the judgment of the trial Court, the plaintiff has come up with this instant application seeking appointment of Advocate Commissioner to identify the property.

4. The learned appellate Judge had rightly, in my opinion, dismissed the application on the ground that the application is belated. The learned appellate Judge had also pointed out that merely because the trial Court had held that no steps have been taken to have a Commissioner appointed, the appellant cannot seek appointment of Commissioner in the appellate Court.



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5. This Court had held that the party seeking appointment of Commissioner in the appellate Court must satisfy the requirements of Order XLI Rule 27 of the Code of Civil Procedure also. I do not find any pleadings in the affidavit filed in support of this application which would satisfy the requirements under Order XLI Rule 27 of the Code of Civil Procedure relating to introduction of evidence at the appellate stage.

6. I therefore do not see any illegality or material irregularity in the order of the appellate Court to warrant interference at my hands in the Revision under Article 227 of the Constitution of India. Therefore, the Revision fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

7. Mr.J.R.K.Bhavanantham, learned counsel appearing for the petitioner would express an apprehension that the learned appellate Judge had almost decided the appeal while dismissing the application for appointment of Commissioner.



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8. A very detailed order has been written by the learned appellate Judge. Suffice to observe that the learned appellate Judge will dispose of the appeal without being influenced by any of the observations in the order impugned in this Revision.

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dsa

Index : No

Internet : Yes

Speaking order

To

The Sub-Ordinate Judge, Tiruvallur.



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R.SUBRAMANIAN, J.

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