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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.NO.2710 OF 2021

AND

C.M.P.NO.19887 OF 2021

K.N.Sesachalam

... Petitioner

.Vs.

1. K.N.Natarajan
2. K.N.Senthil Kumar
3. Zenith Natarajan

4. Lakshmi Saraswathi Educational Trust,
Rep. By its Managing Trustee,
S.Balakrishnan,
No.621, First Floor,
Cyer Mansion,
Chennai - 600 008.

... Respondents

PRAYER:-

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order of the Additional District Court at Krishnagiri, dated 20.10.2021 in I.A.No.06 of 2021 in O.S.No.55 of 2016.

For Petitioner : Mr.P.Valliappan
For M/s.PV Law Associates

O R D E R

The plaintiff in O.S.No.55 of 2016 is on revision. Aggrieved by the dismissal of his application in I.A.No.6 of 2021 seeking appointment of Commissioner to note down the physical features and to take measurement of the suit schedule property with the help of Village Administrative Officer and qualified surveyor and to note down all the other topography of the suit property. The suit is one for partition. The defence that is projected is that there has been a partition of the suit property between the



parties. It is also claimed that the parties have sold different portions of the property individually after the said partition. During the course of trial, after the evidence of the defendants is partially completed, the plaintiff has come up with the instant application seeking appointment of Commissioner.

2. In paragraph-5 of the affidavit filed in support of the application, the plaintiff would plead that an inspection by the Commissioner would show that there is no division or demarcation found in the suit property. Therefore, the attempt of the plaintiff to gather evidence through the medium of Commissioner, which is prohibited. The defendants had also contended that the plaintiff has admitted having sold certain portions of land in his evidence. The trial Court had considered the application in the proper prospective and dismissed the same.

3. Mr.Valliappan, learned counsel appearing for the petitioner would vehemently contend that there is no embargo for the Court to appoint the Commissioner in a partition suit prior to preliminary decree also. I am in entire agreement with the learned counsel on the proposition of law suggested by him, but the power of the Court to appoint the Commissioner can be exercised only within specific parameters. Those parameters are very well laid down in the precedents. I do not think that a repetition of such parameters is necessary, as they are very well known. A party to a proceeding cannot seek to gather evidence by appointing the Commissioner. A reading of the affidavit of the plaintiff filed in support of the application for appointment of Commissioner would show that the attempt is only to gather evidence. I do not propose to go deep into the discussion of the trial Court on the evidence that was let in before it, since the same would jeopardise the case of the parties.

4. However, the dismissal of the application has to be sustained, atleast on the ground that it is belated and that it is an attempt to gather evidence. I see no merit in the revision, the revision therefore fails and it is accordingly dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

VS



To

The Additional District Judge,
Krishnagiri.

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+1cc to Mr.P.Valliappan, Advocate, S.R.No.64609

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PMK (CO)
PBS/27/12/2021