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CRP (NPD) No. 2893 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.12.2021**

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (NPD) No. 2893 of 2021

and

CMP No. 20860 of 2021

1. K.G.Manickam
2. M.Madaiyan ... Petitioners/Petitioners/Plaintiffs

Vs

1. R.Danasekaran
2. Raju
3. R.Ramayee
4. D.Malathi
5. R.Karuna
6. Chandra
7. Kavitha ... Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final orders dated 12.08.2021 passed in I.A.No. 98 of 2019 in O.S.No. 58 of 2019 on the file of the II Additional Sub Judge at Salem.



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For Petitioner : Miss. V.Revathy
for Mr.R.Nalliyappan

ORDER

Challenge in this Revision is to the order dismissing an application in I.A.No. 98 of 2019 seeking appointment of an Advocate Commissioner to measure the suit property.

2. The suit in O.S.No. 58 of 2019 has been laid by the plaintiffs seeking declaration that he is the absolute owner of the suit property and for permanent injunction restraining the defendants from interfering with their possession.

3. The subject matter of the suit is shown as 2 ½ feet lane situate in between the property of the plaintiffs and the defendants. The plaintiffs had filed an earlier suit in O.S.No. 840 of 2011 seeking an injunction. The said suit came to be dismissed by the trial Court and on appeal by the plaintiffs in A.S.No. 12 of 2016, the suit was decreed. Since the defendants



chose to deny the title of the plaintiffs in the said suit, the plaintiffs have come up with this suit for declaration of title and injunction. Pending the said suit, contending that the defendants had trespassed into the property, the plaintiffs sought for appointment of a Commissioner.

4. The trial Court dismissed the application on the conclusion that the existence of 2 ½ feet passage or lane in between the properties of the plaintiffs and the defendants is not denied. It is only the title to the said land that is in dispute. Since the existence of the properties or the measurement is not denied, the trial Court held that there is no need for appointment of a Commissioner.

5. Ms. Revathi, learned counsel appearing for the petitioner would vehemently contend that the appointment of Commissioner to measure the properties with the surveyor is absolutely necessary since both parties are claiming title to the land, that lies in between their properties. She would also add that the defendants had trespassed into the portion of the property pending suit.



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6. If there has been a trespass in violation of the permanent injunction decree granted in A.S.No. 12 of 2016, it is well open to the plaintiffs to seek remedy under Order 21 of the Code of Civil Procedure. The Trial Court has rightly pointed out that there is no dispute regarding the existence of the land in between the properties of the plaintiffs and the defendants as well as the measurement of the said land. Issue that is to be decided in the suit is the title claimed by both the parties.

7. When there is no dispute with reference to the physical features or the lie of the properties and the Court is called upon to decide only the question of title, I do not think an appointment of Commissioner is necessary. The Trial Court had only adverted to that and held that there is no need for a Commissioner. In such circumstances, I do not find any reason to interfere with the order of the trial Court dismissing an application in I.A.No. 98 of 2019 seeking appointment of an Advocate Commissioner to measure the suit properties.



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8. Hence, this Civil Revision Petition fails and it is accordingly dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

23.12.2021

vsg

Index: Yes/No

Speaking order / Non speaking order

To:

1. II Additional Sub Court, Salem.

2. The Section Officer,
VR Section,
Madras High Court, Chennai.



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R.SUBRAMANIAN, J.

Vsg

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