



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.02.2021

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU

C.R.P(MD)No.679 of 2019

and

CMP(MD) .No.3709 of 2019

WEB COPY

1. Ammaiyappan
2. Kannan
3. Nagalakshmi

... Revision Petitioners /
Petitioners/Plaintiffs

Vs.

1. Karthikeyan
2. Kalandar Mohideen
3. The Commissioner,
Aranthangi Municipality,
Taluk Office Road,
Aranthangi Town and Taluk,
Pudukkottai District.
4. The Assistant Engineer,
TANGEDCO,
Back side of Vadakarai Murugan Temple,
Aranthangi Town and Taluk,
Pudukkottai District.

...Respondents/Respondents/
Defendants

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 05.02.2019, passed in I.A.No.422 of 2018 in O.S.No.35 of 2018 on the file of the Sub Court, Aranthangi, Pudukkottai District.

For Petitioner : Mr.K.Baalasundharam

O R D E R

This Civil Revision Petition is filed to set aside the order dated 05.02.2019, made in I.A.No.422 of 2018 in O.S.No.35 of 2018 on the file of the learned Subordinate Judge, Aranthangi, Pudukkottai.

2. The revision petitioners are the plaintiffs and the respondents herein are the defendants in the suit in O.S.No.35 of 2018.

3. Learned counsel for the petitioners would submit that they have filed a civil suit for the relief of declaration and injunction against the respondents in O.S.No.35 of 2018 on the file of the Subordinate Court, Aranthangi, Pudukkottai District and the same is pending. Thereafter the petitioners had filed I.A.No.422 of 2018 for an appointment of Advocate Commissioner to note down the physical features with the help of the surveyor and the same was dismissed by



the Court below. Aggrieved over the same, the present Civil Revision Petition has been filed.

4. Heard the learned counsel for the petitioners and perused the materials available on record.

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5. Perusal of record shows that the 1st respondent is the brother of the petitioner and after the marriage of the 1st respondent herein, the petitioners/plaintiffs and the 1st respondent had entered into a registered partition deed on 26.06.2007 in respect of the suit property along with the vacant land having an extent of 13 cents. It is also stated by the petitioners/plaintiffs that the partition deed was executed only due to the compulsion of the wife's family of the 1st respondent and so far, the properties are not divided and it has not been acted upon. Hence, the suit property and the adjacent land situated in north side of the suit property are in joint possession and to ascertain the same, they have filed an application in I.A.No.422 of 2018 for an appointment of Advocate Commissioner. The learned Judge after considering the arguments and documents adduced by the both parties, dismissed the application stating that the application for appointment of advocate commissioner is only for collecting evidence to establish that the revision petitioners/plaintiffs and the 1st respondent are in possession and enjoyment of the suit property and the adjacent land situated in north side of the suit property. In my considered opinion, as rightly stated by the learned Judge for collecting the evidence Commissioner cannot be appointed. Further, necessity for appointment of Advocate Commissioner for noting down the physical features of the suit property did not arise in the present circumstances of the case. The appointment of Commissioner in no way will help the learned Judge to decide the case. It is the duty of the petitioners/plaintiffs to prove their case by letting oral and documentary evidence. Hence, the learned Judge rightly dismissed the application in I.A.No.422 of 2018, where I do not find any infirmity in the order passed by the learned Judge.

6. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (ADII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To

1. The Subordinate Judge,
Aranthangi, Pudukottai District.

2. The Record Keeper, (2C)
Vernacular Section,
Madurai Bench of Madras High Court, Madurai.

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MA (CO)
KB (01.03.2021) 3P 4C