



C.R.P.(PD).NO.59 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2022

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.59 of 2022

and

C.M.P.No.378 of 2022

1.Sumathi

2.Duraisamy

...Petitioners/Petitioners/Defendants

-V-

Krishnamoorthy

...Respondent/Respondent/Plaintiff

Prayer: Petition filed under Article 227 of the Constitution of India, to set aside the order and decreetal order, dated 15.09.2021 made in I.A.No.136 of 2021 in O.S.No.132 of 2018 on the file of Additional District Munsif, Cuddalore.

For Petitioner : Ms.G.Sumitra

For Respondent : Mr.D.Ravi Chandran



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ORDER

Challenging the dismissal of the application for appointing the Advocate Commissioner to inspect the suit schedule property, the defendant are the revision petitioner before this Court. The brief facts are as follows:

2. The respondent/plaintiff had filed a suit for bare injunction restraining the defendants, their men and agents from interfering with his peaceful possession and enjoyment of the suit A and B schedule properties. The suit A and B schedule properties have been described within a specified boundaries and in order to illustrate the lie of the land, the plaintiffs have also filed a rough sketch along with the plaint.

3. When the suit was filed, the respondent/plaintiff had contended that his right to property had been declared by Judgement and Decree in [O.S.No.231](#) of 2001, on the file of the Principal Additional District Munsif, Cuddalore, in which the 2nd defendant and others were parties. The Decree had restrained the 2nd defendant from interfering with the plaintiff's



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5. Heard the learned counsel appearing for the petitioner, who was making submissions for an admission.

6. A perusal of the plaint would indicate that the plaintiff has filed a suit in respect of properties which have been described within specified boundaries, the lie of land is further elaborated in the rough sketch filed along with the plaint. The defendant has come forward with his application for appointing an Advocate Commissioner to note down the physical features i.e., the existence of a well established band between the suit A schedule property and the remaining properties. The contention of the defendant is that the B schedule properties belongs to them exclusively. They have contended that they have raised Teak wood Trees, Coconut Trees, Jack Fruit Trees and Mango Trees in this extent of land and have also laid pipelines for drip irrigation all of which could be taken note of by the Advocate Commissioner and the real controversy could be brought to light.



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7. The suit is one for bare injunction, a mere perusal of the reasons given for appointing an Advocate Commissioner clearly indicates that the petitioner/defendants are using the Advocate Commissioner to gather evidence on their behalf. The 2nd defendant has already suffered a Decree in respect of the suit properties in an earlier proceedings. That apart, the existence of the bund would by itself not establish the case of the defendants who have to prove the same by independent evidence.

8. The learned Additional District Munsif, Cuddalore has rightly held that there cannot be an Advocate Commissioner appointed to collect evidence for the parties. I do not find any reason to interfere with the orders passed by the Learned Additional District Munsif, Cuddalore, and consequently, the Civil Revision Petition stands dismissed. No Costs. Consequently, connected Civil Miscellaneous Petition is closed.

14.02.2022

Internet : Yes/No
Index : Yes/No
Speaking / Non-Speaking
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To
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The Additional District Munsif,
Cuddalore.



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P.T. ASHA, J.

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