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C.R.P(PD)No.1354 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2022

CORAM:

Mr. JUSTICE N.SESHASAYEE

C.R.P(PD)No.1354 of 2022
& CMP.No.7147 of 2022

1.K.Balachandran
2.R.Shankar Naicker
3.T.Narayanan
4.V.Madhavan
5.V.Venkatachalam
6.R.Venkatesan

... Petitioners

Vs.

1.R.Mani @ Devaki
2.R.Rajendran

... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Docket Order dated 13.11.2019 passed in I.A.No.3 of 2019 in O.S.No.612 of 2019 on the file of the Principal Sub Court, Salem.

For Petitioners : Mr.P.Mani



ORDER

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In a suit for declaration of title and for other ancillary relief in O.S.No.612 of 2019 on the file of the Principal Sub Court, Salem, the plaintiffs took out an Application in I.A.No.3 of 2019 for appointing a Commission for local inspection.

2.The Commissioner after visiting the property has filed a memo before the Court that he was prevented by the defendants from discharging his job in terms of the warrant issued by the Court.

3.Soon, the defendants appeared before the Court to contend that there is a serious dispute as to title and that there is no boundary dispute and required that the order appointing a Commission be suspended. This prayer was rejected by the trial Court and hence, the defendants are before this Court in this Revision.

4.Heard the learned counsel for the revision petitioners.



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5.This Court is disappointed that an Officer of the Court/Commissioner was prevented by the defendants from discharging his duty. In fitness of things, they ought to have rushed to the Court if they are aggrieved. Secondly, the Commissioner inspecting the property and filing a report, *per se* is not going to decide the interstate rights litigated in a civil suit.

6.The learned counsel for the revision petitioners however, would submit that it was an ex-parte Commission and that the Commissioner visited the property without notice to the defendants and hence, the defendants/revision petitioners got excited, as they are unfamiliar with judicial process.

7.Turning to the merit of this case, this Court is not inclined to interfere with the order of the trial Court. The Commissioner is directed to issue due and proper notice to both the sides, visit the property and if he requires the assistance of the Surveyor then, to have the assistance of a Surveyor. The trial Court is also required to ascertain the ambit of authority which the Commissioner shall have in executing the warrant. The revision petitioners are also directed to file a memo of points, which they may require the



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Commissioner to look into, if they are so desirous.

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8.It is underscored, that the Commissioner cannot make a statement on possession, since that falls within the exclusive domain of the Court. In other words, a Commission for local inspection shall confine its exercise only to the extent for which he is appointed and should not embark to report on how the parties enjoy it.

9.Subject to whatever is stated above, this Civil Revision Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

27.04.2022

Index : Yes/No
Internet : Yes / No
Speaking /Non Speaking

Tsg



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To

The Principal Sub Court, Salem.



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N.SESHASAYEE, J.,

Tsg

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