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C.R.P.No.2364 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.06.2022

PRONOUNCED ON : 14.10.2022

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.2364 of 2018
and CMP.No.14655 of 2018

1.Manoharan (died)

2.M.Vanithamani

3.M.Kumar

4.Suganthi

5.Vasanthi

6.N.Mythili

..Petitioners/Plaintiffs

Vs

Aalan

..Respondent/defendant.

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and decretal order dated 20.06.2018 made in I.A.No.457 of 2018 in O.S.No.81 of 2008 pending on the file of District Munsif Court, Thiruvotriyur.

For Petitioners : Mr.P.C.Harikumar

For Respondent : Mr.E.Prabu



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ORDER

The revision petitioners herein are the plaintiffs. They filed the suit for permanent injunction. They filed I.A.No.457 of 2018 praying to appoint an Advocate Commissioner to inspect the plaint schedule property and note down the physical features of the property along with Head surveyor/Surveyor of the Saidapet Taluk and file the report.

2. In the said I.A. defendant filed counter stating that D.W.1 was cross examined by the plaintiffs and when the matter was posted for arguments, the I.A., has been filed seeking for appointment of Advocate Commissioner to inspect plaint schedule property and note down physical feature of the property along with Head Surveyor, Saidapet Taluk and file the report.

3. According to the respondent/defendant, note down the



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physical features of the property is not material or relevant for the purpose of deciding the relief sought for in the suit. The attitude of the petitioner is to drag on the proceedings and the suit is of the year 2008.

4. The learned Judge, trial court, while passing orders in I.A.No.457 of 2018, pointed out that according to the petitioner/plaintiff, the respondent/defendant has encroached his property. The defendant would submit that documentary evidence along with the oral evidence has been completed on both sides and the suit is posted for arguments and now after having completion of 10 years, the petitioner has filed the petition for appointment of commissioner. The learned Judge also held that the suit is posted for arguments and so this kind of petition is filed with intention to protract the proceedings for the collection of evidence and so appointment of advocate commissioner is not necessary at this stage and in such view, dismissed the I.A.



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5. Aggrieved by the same, the present civil revision petition is filed.

6. The learned counsel for the petitioners would submit that in the written statement filed by the defendant, the defendant claims ownership of the property under S.No.450/2B1 covered under the Settlement Deed dated 29.03.2007 said to have been executed by the defendant's mother and the same was registered as Document No.4571 of 2007 on the file of Sub Registrar, Red Hills and he does not claim any right over the property covered under Old.S.No.450/5 and present S.No.450/6 and in such circumstances it is the duty of the revenue officials to make inspection of the property along with FMB sketch and to file a report and it will give quietus to the lis between the parties.

7. The petitioners would also contend that D.W.1 himself admits that if the property would have been surveyed based on Ex.A.1 then only the present issue can be adjudicated.



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8. The learned counsel for the petitioners placed reliance on the following citations to support their contention that if no prejudice would be caused by the appointment of an advocate commissioner for the purpose of inspecting the property and submitting his report, local investigation is the best way to find out the position.

1. 2002 (4) L.W.Page No.142 [1.Sarawathy and another Vs. Viswanathan]

2. 2008 (6) CTC 282 [Velmurugan Vs. Joseph]

3. 2016 (5) L.W.Page No.658 [B.Amutha Vs. Anandhi Sankara Narayanan].

9. Per contra, learned counsel for the respondent in support of his contention that while the court below has given cogent reasons as to why the application for appointment of advocate commissioner is dismissed at the stage of arguments of the suit, relied on the following citations.



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1. CRP(MD).No.1625 of 2016 dated 24.08.2016 {Madurai Bench of Madras High Court}.

2. CRP.No.2791 of 2016 dated 14.02.2018 [Madras High Court]

3. CRP.No.1934 of 2018 dated 23.07.2018 [Madras High Court]

10. Heard both sides and perused the materials available on record.

11. The suit is for permanent injunction. The prayer in the I.A., is for appointment of an Advocate Commissioner to inspect the plaint schedule property and note down the physical features of the property and to file the report. The appointment of Advocate Commissioner is only to aid the court to assess the evidence let in by both parties with respect to the dispute. Further, Commissioner cannot be appointed to collect the evidence in support of the plaintiffs' case. That factum was rightly considered by the trial court and therefore, the learned Judge, pointed out that appointment of Advocate Commissioner is not necessary to adjudicate the issue in the suit. Hence, I do not find any reason to interfere with the order passed by the trial court.



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12. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

14.10.2022

Index :Yes/No

Internet:Yes/No

Speaking order/Non-speaking order

nvsri

To

1.The learned District Munsif, Thiruvotriyur.

2.The Section Officer, V.R.Section, High Court of Madras.



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J.NISHA BANU, J.

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ORDER
IN
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