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C.R.P.No.1382 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2022

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.1382 of 2019
and C.M.P.No.9015 of 2019

1. Pushparaj
2. Sengolmarry

... Petitioners

Vs.

Arul Prakasam Joseph

... Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside fair and decreetal orders passed in I.A.No.80 of 2019 in O.S.No.142 of 2013 dated 07.03.2019 on the file for the Court of District Munsif cum Judicial Magistrate, Kattumannarkoil and allow the said I.A., by allowing this CRP.

For Petitioners : Mr.A.Muthukumar

For Respondent : Mr.A.Murugan



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ORDER

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This Civil Revision Petition has been filed as against the judgment and decree order dated 07.03.2019, passed by the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, in I.A.No.80 of 2019 in O.S.No.142 of 2013, thereby dismissing the petition seeking appointment of the Advocate Commissioner to inspect the suit property with the help of the Village Administrative Officer and value the trees situated in the suit property.

2. The petitioners are the defendants in the suit in O.S.No.142 of 2013 filed by the respondent for recovery of possession and permanent injunction. The respondent already filed suit in O.S.No.79 of 2001 for declaration, permanent injunction in respect of the suit property. At the same time, the petitioners also filed suit for permanent injunction in respect of the very same suit property in O.S.No.55 of 2000 and both the suits were tried together. Finally, the suit filed by the respondent was dismissed and the suit filed by the petitioners allowed. Aggrieved by the same, the respondent filed an appeal suit in which the suit filed by the respondent for



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the relief of declaration alone allowed and the suit filed by the petitioners was also allowed in respect of injunction alone for the very same property.

Therefore, the respondent filed the present suit for recovery of possession and permanent injunction on the strength of decree of declaration.

3. The petitioners filed written statement stating that the suit property was not properly valued and the respondent failed to value the cashew nut trees, jack trees and other trees which were planted in the suit property. Thereafter, the petitioners filed petition seeking appointment of Advocate Commissioner to inspect the property and note down the value of the trees planted by the petitioners with the help of the Village Administrative Officer. However, the Court below dismissed the said petition as against which the present Civil Revision Petition.

4. Heard Mr.A.Muthukumar, learned counsel appearing for the petitioners and Mr.A.Murughan, learned counsel appearing for the respondent.



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5. The only point for consideration in this Civil Revision Petition is that whether the trees planted in the agricultural land can be valued for Court fee or not?

6. In this regard, the learned counsel appearing for the respondent relied upon the judgment of this Court reported in **39 Ind Cas 254** in the case of **Kullappa Goundan Vs. Abdul Rahim Sahib**, dated 09.11.1916, which held that the holding is used as an agricultural holding, whether the crop be a cereal one or a garden crop. The coconut trees upon nanja lands are only a crop on it and do not change the nature of the field. If that is so, no separate Court-fee is leviable on the coconut trees. When the suit filed for recover possession of the land, the plaintiff need not value the mesne profits separately, unless he lays claim to past mesne profits at a particular rate.

7. In the case on hand, only for the purpose of value the suit, the petitioners sought for appointment of Advocate Commissioner to inspect the suit property and note down the trees which were planted by them and its



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value with the help of the Village Administrative Officer. The petitioners already suffered with the decree of declaration in respect of the suit property in favour of the respondent herein, all along they are enjoying the suit property. Even then, the respondent filed suit for recovery of possession alone and did not ask for any means profit. Therefore, the respondent need not to value the trees which were planted by the petitioners herein to pay the Court fees. Hence the Court below rightly dismissed the petition and this Court finds no infirmity or illegality in the order passed by the Court below. However, the petitioners are at liberty to raise the issue in respect of Court fee in other aspects as preliminary issue before the Court below.

8. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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G.K.ILANTHIRAIYAN, J.

rts

To

1. The District Munsif
cum Judicial Magistrate,
Kattumannarkoil.

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and C.M.P.No.9015 of 2019

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