



CRP.No. 1344 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2022

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

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and

CMP.No. 7388 of 2020

Selvamuthukumarasamy

... Petitioner

Versus

1. Samsunisa
2. Nijamudeen
3. Subandhiri

.. Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, prays to set aside the fair and decretal order dated 04.03.2020 in I.A.No. 01 of 2019 in O.S.No. 287 of 2018 on the file of Principal District Munsif Court, Mayiladuthurai.

For Petitioner	: Mr.B. Jawahar
For RR 1 & 3	: Mr.S. Kingston Jerald
For R2	: No Appearance

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order, dated 04.03.2020 in I.A.No. 01 of 2019 in O.S.No. 287 of



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2018 on the file of Principal District Munsif Court, Mayiladuthurai.

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2.The revision petitioner herein is the plaintiff and the respondents herein are the defendants in the original suit proceedings.

3. According to the petitioner/plaintiff, the suit property is in possession of the plaintiff and there is a compound wall between the petitioner and the respondents property. The respondents/defendants have not mentioned any valid reason for appointment of Advocate Commissioner and they deliberately to harass the petitioner/plaintiff and drag on the proceedings, the respondents have filed the application before the Court below. Therefore, there was no necessity for appointment of Advocate Commissioner in the suit. Hence, the petitioner/plaintiff prays the finding of the trial Court is set aside.

4. The contention of the respondents/defendants is that the petitioner/plaintiff filed the suit for permanent injunction restraining the defendants from in any manner to interfere with the plaintiff's peaceful possession and enjoyment of the suit property. Now, the respondents



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seeking to inspect, measure and note down the physical features of the suit property and it will minimize the laborious work recording various evidences and hence, the respondents/defendants sought for appointment of Advocate Commissioner along with Surveyor to inspect, measure and note down the physical features of the suit property. Hence, the respondents pray to dismiss the above Civil Revision Petition.

5. Heard both sides and perused the materials placed on record.

6. On a perusal of the records, it is seen that the petitioner/plaintiff filed the suit in O.S.No. 287 of 2018 before the Principal District Munsif Court, Mayiladuthurai, for permanent injunction restraining the defendants from in any manner interfering with the plaintiffs' peaceful possession and enjoyment of the suit property. The first defendant has contested the suit by filing written statement and adopted the same by the defendants 2 & 3 and denying all the averments made in the plaint. During the pendency of the suit proceedings, the respondents/defendants herein filed I.A.No. 1 of 2019 under Order 26 Rule 9 of CPC., for appointment of Advocate Commissioner to inspect, measure and note down the physical features of



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the suit property. After perusing the records, the Court below allowed the aforesaid application by order dated 04.03.2020. Aggrieved by the said order, the petitioner/plaintiff has filed this Civil Revision Petition.

7. On a perusal of the impugned order, it is seen that the petitioner/plaintiff has filed the suit for permanent injunction. Pending the suit, the respondents/defendants filed I.A.No.01 of 2019 under Orde 29 Rule 9 CPC seeking to appoint an Advocate Commissioner along with Surveyor to inspect, measure and note down the physical features of the suit property. The learned counsel for the revision petitioner contended that the suit property was fully covered with boundaries of compound wall and fence, and there was no necessity to appoint an Advocate Commissioner along with Surveyor. On the other hand, the learned counsel for the respondents contended that there is no compound wall on the subject property. Therefore, it is necessary to appoint an Advocate Commissioner to inspect, measure and note down the physical features of the suit property. Therefore, there is no illegality or irregularity in the order passed by the Court below. Hence, this Court is not inclined to interfere with the order passed by the Court below. However, this Court is



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not inclined to allow the above Civil Revision Petition.

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8. On going through the facts and circumstances of the case, this Court directs the Court below to appoint fresh Advocate Commissioner to inspect, measure and note down the physical features of the suit property along with Surveyor as well as to take photographs of the subject property after issuing notice to both the parties and file a report therein, within a period of 8 weeks from the date of receipt of a copy of this order. Further, this Court directs the Court below to expedite the trial in the suit and dispose of the same as expeditiously as possible without giving unnecessary adjournments to the parties concerned.

9. With the above directions, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

16.12.2022

msm

Index : Yes/No

Speaking order : Yes/No

Neutral Citation : Yes/No



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To

1. The Principal District Munsif Court, Mayiladuthurai.
2. The Section Officer, V.R.Section, High Court, Madras.



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V.BHAVANI SUBBAROYAN, J.

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