



CRP.No.1380 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.1380 of 2019
and CMP.No.9008 of 2019

Gurumoorthy

... Petitioner

Vs.

1.Kulandaivelu

2.Balu @ Balasubramanian

... Respondents

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 09.01.2019 made in IA.No.441 of 2018 in OS.No.95 of 2017 on the file of the Principal District Munsif Court, Mayiladuthurai and to dismiss the said application by allowing the above civil revision.

For Petitioner : Mr.B.Jawahar
for Mr.M.J.Srinivas

For Respondents : Mr.A.Muthukumar

ORDER

This civil revision petition has been filed to set aside the fair and decretal order dated 09.01.2019 made in IA.No.441 of 2018 in OS.No.95 of 2017 on the file of the Principal District Munsif Court, Mayiladuthurai,



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thereby allowed the petition seeking appointment of advocate commissioner to inspect the property and to note down the physical features and location of the suit property with the help of a surveyor.

2. Heard, the learned counsel for the petitioner and the learned counsel for the respondents.

3. The petitioner is the defendant in the suit filed by the respondents for permanent injunction in respect of the suit property. The case of the first respondent is that the first respondent and the petitioner were allotted properties as per the Will dated 25.07.1990 executed by his father. Accordingly, the first respondent was allotted suit properties along with other properties. The petitioner was also allotted part of the property comprised in survey No.162/2. The petitioner filed written statement stating that the respondents filed suit without even any boundary for the suit property. Therefore, appointment of advocate commissioner is nothing but collection of evidence and gathering the materials to strengthen their case. Without even locating their property, they cannot even maintain the suit.



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4. Though the respondents failed to mention the boundaries of the suit properties, they can maintain the suit by mentioning the survey number and the extent of the property since they were allotted suit property without any boundaries as per the Will dated 25.07.1990. Therefore, in order to locate the property, Advocate Commissioner can be appointed even in the suit for bare injunction. However, the Advocate Commissioner shall not mark boundaries for the suit properties since there was no boundaries mentioned in the Will dated 25.07.1990. To that extent, Advocate Commissioner may be appointed to inspect the suit property with the help of a surveyor to find out the locality of the property.

5. With the above clarification, this civil revision petition is disposed of. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order
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G.K.ILANTHIRAIYAN, J.

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To
The Principal District Munsif Court,
Mayiladuthurai

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