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C.R.P.No.816 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2022

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

C.R.P.No.816 of 2016

Nanjappan
S/o.Kitta Mooppan
D.No.11/106 Sathy Ukkiram Road
Mettukadai, Sanarpalayam
Ukkaram Village
Sathyamangalam Taluk.
respondent/

.. Petitioner/1st

1st Defendant

.Vs.

1.Masiriammal

..1st Respondent/Petitioner
/Plaintiff

2.Kitta Mooppan
Respondent

..2nd Respondent/2nd

/2nd Defendant

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 27.10.2015 made in I.A.No.590 of 2012 in O.S.No.151 of 2012, on the file of the learned District Munsif, Sathyamangalam and for any other relief or reliefs that may be appropriate in the present circumstances of



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For Petitioner : Mr.V.P.K.Gowtham

For Respondents : Mr.S.Parthasarathy
for R2

No Appearance for R1

ORDER

This Civil Revision Petition has been filed by the 1st defendant challenging the fair and final order passed by the District Munsif, Sathyamangalam in I.A.No.590 of 2012 in O.S.No.151 of 2012, dated 27.10.2015.

2.The 1st respondent/plaintiff filed a suit seeking for the relief of declaration and permanent injunction. During the pendency of the suit, an application was filed under Order 26 Rule 9 of CPC., for appointment of an Advocate Commissioner for measurement of the suit property and for fixing boundaries. This application came to be allowed by the Court below and aggrieved by the same, 1st defendant has filed this Civil Revision Petition.

3.Heard Mr.V.P.K.Gowtham, learned counsel for the petitioner, Mr.S.Parthasarathy, learned counsel for R2 and there is no appearance for R1.



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4.The case of the plaintiff is that one Marappa Gounder, who is her vendor had purchased undivided share measuring an extent of 0.12 acres out of 7.24 acres and this was in turn purchased by the plaintiff on 21.02.1969. The grievance of the plaintiff is that the defendants were attempting to interfere with the possession and enjoyment of the suit property in the guise of having purchased the adjacent properties. That apart, the defendants were also attempting to create a cloud over the title of the plaintiff.

5.It is an admitted case that the plaintiff had purchased 0.12 acres out of a larger extent of property. Hence, the plaintiff has to prove her title and possession independently and an Advocate Commissioner cannot be appointed for this purpose. By permitting an Advocate Commissioner to visit the property and to measure the same and to fix the boundaries, the Court below has virtually simplified the case for the plaintiff, who otherwise was duty bound to prove her title and possession. The appointment of an Advocate Commissioner will prejudice the rights of the defendants and a report of the Advocate Commissioner cannot be substituted for the burden of proof on the part of the plaintiff to prove her case.

6.The order passed by the Court below clearly suffers from illegality and



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infirmity and the same requires the interference of this Court. This order will not come in the way of plaintiff to independently prove her right and title over the suit property by letting in evidence. This order will not have any bearing on the Court below to independently consider the claim made by both the parties on its own merits and in accordance with law.

7.In the result, the fair and final order made in I.A.No.590 of 2012 in O.S.No.151 of 2012 dated 27.10.2015, on the file of the District Munsif, Sathyamangalam, is hereby set aside. This Civil Revision Petition is accordingly allowed. No costs.

05.12.2022

KP
Internet
Index:Yes/No
Speaking Order: Yes/No



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To

The District Munsif,
Sathyamangalam.



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N.ANAND VENKATESH. J.,

KP

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