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C.R.P.No.3581 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.3581 of 2022

and

C.M.P.No.19006 of 2022

Ayothi

... Petitioner

Vs.

Vedikundu @ Vedi (Died)

Velu (Died)

1.Aandal Ammal

2. Indhu

3.Sivakumar

4.Arumugam

5.Selvam

6.Jothi

7.Minor Boomiga

8.Minor Santhiya

9.Minor Thrisha

10.Minor Aaru



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11. Minor Surya

... Respondents

(6th respondent /8th plaintiff is the guardian of Minor respondents/defendants 7 to 11`)

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, pleaded to set aside the fair and decreetal order dated 09.01.2019 in I.A.No.38 of 2018 in O.S.No.32 of 2009 on the file of the District Munsif, Chengam.

For Petitioner : M/s.K.R.Arun Shabari
for M/s.P.Munusami

For Respondents : No Appearance

ORDER

This Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition filed by the revision petitioner seeking permission to appoint Advocate Commissioner to note down the physical features and also to find out the possession of the suit property.

2. The respondents herein filed a suit for bare injunction against the petitioner. The petitioner herein filed a written statement and contested the suit on the ground that he got possession of the property under the assignment made by the



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District Collector, Thiruvannamalai dated 08.12.1999 and he has been enjoying the property by putting super structure. Pending suit, the revision petitioner/defendant filed an application for appointment of Advocate Commissioner to note down the physical features of the suit property and also to find out the possession of the super structure standing there.

3. The Court below dismissed the said application on the ground that in a suit for injunction parties have to establish their possession only by leading evidence, it is not open to them to seek appointment of Advocate Commissioner to find out actual possession of the suit property. Aggrieved by the said order, the revision petitioner has come up by way of this revision.

4. The learned counsel for the petitioner vehemently contended that though he filed an application for appointment of Advocate Commissioner to note down the physical features and to find out the possession of the suit property, the Court below was carried away by the second limb of the prayer and failed to consider the first limb of the prayer.

5. Having regard to the pleadings of the parties, there is no controversy



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in the pleadings with regard to the identity of the property or physical features. The

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S.SOUNTHAR, J.

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real dispute is only with regard to the actual possession of the suit property. As far as the suit for injunction is concerned, the parties have to prove their lawful possession by adducing necessary oral and documentary evidence. The Advocate Commissioner cannot conduct roving enquiry in the suit property, to find out who is in possession of the suit property. Therefore, I do not find any error in the order passed by the Court below. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

24.11.2022

Index: Yes/ No

Speaking Order / Non-Speaking Order

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To

1. The District Munsif Court,
Chengam.



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