



C.R.P.(NPD)No.2297 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P.(NPD)No.2297 of 2022

and

C.M.P.No.11778 of 2022

Ponnusamy

... Petitioner

..Vs.

1.Muthai

2.Saravanan

...

Respondents

Prayer :- Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 02.03.2022 passed by the learned 1st Additional District Munsif Judge, Salem passed in I.A.No.--- of 2021 (26R9) in O.S.No.558 of 2018 and allow this revision petition.

For Petitioner : Mr.T.Ganesan

ORDER

This Civil Revision Petition has been preferred challenging the order dated 02.03.2022 passed in unnumbered I.A. of the year 2021 in O.S.No.558 of 2018 by the learned I Additional District Munsif



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Judge, Salem.

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2. Heard the learned counsel for the petitioner and perused the materials available on record.

3. The revision petitioner is the plaintiff, who filed a suit in O.S.No.558 of 2018 against the respondents/defendants to declare the settlement deed executed by the first defendant in favour of the second defendant dated 18.6.2018, is null and void and for consequential permanent injunction. During the pendency of the suit, the plaintiff has filed an interlocutory application for appointment of Commissioner by stating that the defendants have denied the existence of certain houses in the suit properties and hence, the Commissioner should be appointed for the purpose of visiting the suit properties and file a report along with sketch. The said application was dismissed. Aggrieved over the same, the petitioner/plaintiff has preferred the present revision petition.

4. The learned counsel for the revision petitioner/plaintiff



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submitted that since the respondents/defendants have denied the existence of the houses in the suit properties, he cannot opt any other way to establish that there are houses situated in the suit property; the learned trial Judge before taking into consideration of the submission made by the petitioner had chosen to dismiss the application.

5. The very relief sought in the suit is about the binding nature of a settlement deed dated 18.6.2018. So, the issue involved in this case has got nothing to do with the physical features of the suit properties. Just because certain questions were made about the physical features and witnesses have given certain answers, the Court is not obliged to appoint the Commissioner in order to decide an issue unrelated to the suit. Even for the sake of arguments, if the plaintiff needs to prove the existence of the houses for the purpose of proving his enjoyment, it should be proved by producing the documents evidencing his possession. The Commissioner cannot be appointed to find out, who is in possession of the property or to collect the evidence.



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5. The learned counsel for the petitioner specifically submitted that he did not chose to seek the prayer of appointment of Commissioner to establish his possession over the suit property. In that case, it is still easier. The scope of other reliefs namely declaration of the binding nature of certain documents does not require the appointment of the Commissioner. The learned trial Judge has rightly dealt the issue and hence, I find there is no grounds for interference.

6. In the result, this Civil Revision Petition is dismissed and the order dated 02.03.2022 passed in unnumbered I.A. of the year 2021 in O.S.No.558 of 2018 by the learned I Additional District Munsif Judge, Salem is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index:Yes No
Speaking Order:Yes/No
ms

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The 1st Additional District Munsif Judge,
Salem.



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R.N.MANJULA, J.

ms

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