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C.R.P.No.3214 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.3214 of 2022
and C.M.P.No.17113 of 2022

1. Kannappan
2. Sakunthala
3. Jayalakshmi
4. Vasanthamala
5. Vijayakumar

.. Petitioners

Vs.

Dela Victoire Celine

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, pleaded to set aside the order dated 03.08.2022 passed by the Principal Sub Judge, Puducherry in I.A.No.526 of 2022 in O.S.No.57 of 2013, allow this Revision Petition.

For Petitioners : Mr.R.Thiagarajan

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition seeking appointment of an Advocate Commissioner.

2. The respondent herein filed a suit for declaration and recovery of



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possession in respect of B schedule property and for bare injunction in respect of C schedule property. According to the plaint averment, the suit B schedule property is 100 Square feet in first item of suit A schedule property and the suit C schedule property is the second item of suit A schedule property. The trial in the suit had already commenced. Plaintiff side evidence was over and the revision petitioners/defendants were also examined three witnesses namely DW1 to DW3. At this stage, the revision petitioners/defendants filed an application in I.A.No.526 of 2022 seeking appointment of an Advocate Commissioner to inspect the suit property with the assistance of a competent surveyor to measure the suit B and C schedule properties and note down the physical feature.

3. The revision petitioners in their affidavit filed in support of their application for appointment of Advocate Commissioner had stated that the respondent asserted in the plaint that the extent of suit B schedule property in possession of revision petitioners is 100 square feet. However, the revision petitioners are in possession of 400 square feet and in order to prove the factum of enjoyment of suit B and C schedule properties, it is just a necessary to appoint an Advocate Commissioner.



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4. The learned counsel for the petitioners submitted that since there is a dispute with regard to the extent of property in occupation of the defendants, there is a need of appointment of Advocate Commissioner and he also relied on the orders passed by this Court in C.R.P(PD).No.1461 of 2005 and C.R.P.(MD).No.979 of 2018 in support of his contention.

5. It is settled law that Advocate Commissioner cannot be appointed to prove the factum of possession or enjoyment. A mere perusal of the affidavit filed by the revision petitioners in support of the petition for appointment of an Advocate Commissioner would suggest that appointment of Advocate Commissioner was sought just to prove the factum of enjoyment of Suit B and C schedule properties. It is for the revision petitioners to aduse appropriate evidence to prove that they are in possession of 400 square feet in suit A schedule property. It is not open to them to seek appointment of Advocate Commissioner to find out the actual extent of the property in enjoyment of the revision petitioners. In order words, an Advocate Commissioner cannot give any finding with regard to the factum of possession or extent of enjoyment by any one of the party to the suit.

6. In the order passed in C.R.P(PD).No.1461 of 2005, this Court observes



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that Advocate Commissioner can be appointed in case of doubt with regard to the identification or location of the suit property. As far as this case is concerned there is no dispute with regard to the identification or location of the suit property. The respondent/plaintiff asserted that the revision petitioners are in enjoyment of only 100 square feet in first item of suit A schedule property and the same has been described as suit B schedule property, whereas, the revision petitioners claim that they are in enjoyment of 400 square feet in first item of suit A schedule property. Therefore, the above said decision is not applicable to the facts of the case.

7. In the order passed in C.R.P.(MD).No.979 of 2018 this Court observed that there was a dispute with regard to the location and lie of suit property. However, in the case on hand there is no dispute with regard to the location and lie of suit property. The dispute is with regard to the extent of property in possession of the revision petitioners. Therefore, the Court below had rightly concluded and dismissed the application and this Court does not find any infirmity or illegality in the order passed by the learned Principal Subordinate Judge, Puducherry.



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8. With these observations, this Civil Revision Petition stands dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/ No

Internet : Yes / No

To

The learned Principal Sub Judge, Puducherry.



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