



CRP PD(MD)No.1420 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 16.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP PD(MD) No.1420 of 2022 and
CMP(MD) No.5906 of 2022

1.M.Junaithabegum
2.A.Mohamed Thajudeen

... Petitioners

Vs

1.A.Mohamed Saleem
2.The Sub Registrar,
Thiruvaiyaru,
Office of Sub Registrar,
Thanjavur Main Road,
Thiruvaiyaru Town and Munsif,
Thanjavur District.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 16.12.2021 passed in I.A.No.254 of 2021 in O.S.No.209 of 2018, on the file of the Principal Subordinate Judge, Thanjavur.

For Petitioners : Mr.M.R.Sreenivasan

For Respondents : Mr.P.T.Thiraviam,
Government Advocate.



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ORDER

This Civil Revision Petition is filed as against the order passed by the learned Principal Subordinate Judge, Thanjavur in I.A.No.254 of 2021 in O.S.No.209 of 2018, dated 16.12.2021.

2.The petitioners are the plaintiffs in O.S.No.209 of 2018 on the file of the Principal Subordinate Court, Thanjavur, which was filed for the relief of permanent injunction. The first petitioner claims that the suit A schedule property is her absolute property and the suit B schedule property is owned by her son and her husband/ the second petitioner herein. Pending the suit, the plaintiffs filed an interlocutory application in I.A.No.254 of 2021, under Order 26 Rule 9 of Civil Procedure code, for appointment of Advocate Commissioner. They have also taken a specific stand that the first defendant filed a written statement that he became the owner of the land to an extent of 24 cents in the suit Survey number, by virtue of a settlement deed said to have



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been executed by his father in the year 1992. He also relied on the settlement deed dated 20.07.2006. On the strength of those settlement deeds, the first defendant claimed that he is having right over the suit schedule property. According to the petitioners/plaintiffs, the documents referred by the defendants do not relate to the suit schedule property and to substantiate the same, the petitioners filed the above application for appointment of an Advocate Commissioner. The said application was dismissed by the trial Court. Aggrieved over the same, the present Civil Revision Petition is filed.

3.The learned counsel appearing for the petitioners submits that the property which has been referred by the first defendant in his written statement is different. The first respondent is resisting the suit that she became the owner of 1 acre 24 cents in the suit survey number, by way of a settlement deed said to have been executed by his father during 1992. According to the learned counsel, in order to identify



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whether the documents filed by the first defendant are pertaining to the suit schedule property or not, the petitioners filed the interlocutory application for appointment of Advocate Commissioner to measure the suit schedule property. However, the trial Court dismissed the said application.

4. Heard the learned counsel for the petitioner and perused the materials placed on record.

5. The suit was filed for the relief of permanent injunction. Pending the suit, the plaintiffs filed an interlocutory application in I.A.No.254 of 2021 for appointment of Advocate Commissioner. The trial Court, while dismissing the application has held that the plaintiffs by themselves have filed list of documents and also produced Encumbrance Certificate for the suit property. Hence, there is no dispute between the parties regarding the boundaries and identification



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of the suit property and the suit is for permanent injunction alone.

Hence, there is no necessity for appointment of Advocate Commissioner.

6.In view of the above, this Court is not inclined to interfere with the order of the trial Court. The trial Court shall decide the suit based on the documents placed before it by either side. Since the suit is of the year 2018, the trial Court shall endeavour to conclude the trial as expeditiously as possible, preferably within a period of eight months from the date of receipt of a copy of this order.

7.Accordingly, this Civil Revision Petition is dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

16.09.2022

Internet : Yes

Index : Yes / No

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To

The Principal Subordinate Judge, Thanjavur.



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B.PUGALENDHI, J.

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