



CRP (MD) No.1329 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP (MD) No.1329 of 2022

and

CMP (MD) No.5498 of 2022

G.Gomathi Thilagasekaran : Petitioner

Vs.

M.Chinnamuthu : Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records in connection with the fair and decreetal order dated 13.04.2022 made in I.A.No.73 of 2022 in O.S.No.33 of 2022 on the file of the District Munsif Court, Madurai and quash the same.

For Petitioner : Mr.J.Lawrance

For Respondent : Mr.G.Thalaimutharasu



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ORDER

The respondent / plaintiff has filed the suit in O.S.No.33 of 2022 for bare injunction and also taken out the application in I.A.No.73 of 2022 under Order 26 Rule 9 CPC to appoint an Advocate Commissioner. The trial Court, considering the rival submissions, has passed an order dated 13.04.2022, appointing Advocate Commissioner. Aggrieved over the same, the petitioner / defendant has filed the civil revision petition.

2.Learned Counsel appearing for the petitioner submitted that without any records, the suit has been filed for bare injunction and an Advocate Commissioner has also been appointed, when the plaintiff has not even made out any case through revenue records. The plaintiff has simply referred the survey numbers as 137/19, 137/3A, 137/3A2B, 137/3BA13, 137/3C1, 137/3D1C, 137/3D2, without there being any revenue documents showing the title. It is not known as to how the Advocate Commissioner is going to inspect the properties in different survey numbers and take measurements, in the absence of any revenue records. Though



a detailed counter-affidavit has been filed by the petitioner / defendant, the trial Court has summarily allowed the interlocutory application.

3.Learned Counsel appearing for the respondent / plaintiff, by filing an additional typed set of papers, submitted that the suit schedule properties belong to one Malliga, W/o.Murugesan and the respondent / plaintiff purchased the properties from the said Malliga, by a registered sale deed. The revenue authorities have also issued patta in favour of Malliga in respect of the survey numbers as 137/19, 137/3A, 137/3A2B, 137/3BA13, 137/3C1, 137/3D1C, 137/3D2. He has also produced the FMB sketch and according to him, the petitioner / defendant has encroached upon the suit schedule properties and has also put up some constructions. In order to establish his case, appointment of Advocate Commissioner is necessary and therefore, he has taken out the application, which was also rightly allowed by the trial Court.

4.This Court paid it's anxious consideration to the rival submissions and also to the available materials.



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5.The suit was filed for the relief of injunction with regard to the properties in survey numbers as 137/19, 137/3A, 137/3A2B, 137/3BA13, 137/3C1, 137/3D1C, 137/3D2. The respondent / plaintiff has also taken out an application for appointment of an Advocate Commissioner to note down the physical features of the suit schedule properties, since his case is that the petitioner / defendant has encroached upon his properties and has also put up some constructions.

6.The respondent / plaintiff has also produced the FMB sketch, sale deed and other documents before the trial Court, based on which, the trial Court has appointed Advocate Commissioner to ascertain as to whether there is any encroachment in the suit schedule properties. For elucidating the matter in dispute, the Court felt that appointment of Advocate Commissioner is necessary and accordingly, ordered for the same. This Court does not find any error in the order of the trial Court that warrants interference.



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In the result, this civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
gk

20.07.2022

To

The District Munsif,
Madurai.



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CRP (MD) No. 1329 of 2022

B. PUGALENDHI, J.

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CRP (MD) No. 1329 of 2022

20.07.2022