



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.01.2022

CORAM

THE HONOURABLE **MS.JUSTICE P.T.ASHA**

C.R.P. (MD) No.883 of 2020

and

C.M.P (MD) No.5831 of 2020

S.Murugan

... Petitioner/Petitioner/
Plaintiff

Vs.

1.Mariammal

2.P.Vetriselvan

3.Palanimanickam @ Manimaran

... Respondents/Respondents/
Defendants

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 13.02.2020 made in I.A.No.156 of 2019 in O.S.No.220 of 2018 on the file of the learned Additional Subordinate Court, Thanjavur District and allow the above civil revision petition.

For Petitioner : Mr.K.M.Karunakaran

For Respondents : Mr.S.Deenadhayalan

ORDER

The plaintiff aggrieved by the dismissal of his application for appointing an Advocate Commissioner is before this Court.

2.Brief facts of the case are as follows:

The plaintiff has filed the suit on the file of the Principle Sub Court, Thanjavur for declaration that the suit first item of the property belongs to the revision petitioner and for mandatory injunction to remove the illegal construction put up thereon and hand over the possession to the plaintiff and for an injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit second item of the property. The plaintiff had contended that he had come to the possession of the property by virtue of settlement deed, dated 04.12.2008 executed by his father and that he has been enjoying the same since then. Out of the 82 cents of the property situated in S.No.118/2 (New S.No.118/4), 21 cents on the west was purchased by one Sengamalam, which is now in the possession and enjoyment of one Subramaniam, sole legal heir of Sengamalam. On the east, 22.5 cents belong to the plaintiff and the respondent 1 and 2 had started encroaching into this portion by putting up a shed in the second week of the March, 2017. When the petitioner asked them to put up their construction, after measuring their property, the respondents informed that they would do so and they would also state that the shed was put up in their portion. They also gave an assurance to the plaintiff that they would remove the same, if it is found to be



an encroachment in the petitioner's portion. The petitioner would submit that only after verifying the document dated 11.04.1950, he had come to know that the third defendant owned an extent of 13 and half cents in the above survey number. But, he had executed a settlement deed in favour of the second respondent to an extent of 20 and half cents, thereby, giving an excess of nearly 7 cents. The plaintiff, therefore, came to know that the respondent had encroached into his property. Therefore, the suit. He would submit that these factors has to be established by appointing an Advocate Commissioner to visit the suit property. The respondent filed their counter *inter alia* contending that the suit is bad for non-joinder of necessary parties and that apart, any application in their absence was totally incorrect. They had also stated that in the event of the Court coming to the conclusion that the suit property had to be measured, the the measurement should take place with the Commissioner perusing of the documents of all the parties. The learned Additional Subordinate Judge, Thanjavur District by order dated 13.02.2020 dismissed the said application. The learned Judge held that the appointment of an Advocate Commissioner is totally unnecessary in the instant case as the facts have to be proved by both parties through documentary evidence and therefore, the Commissioner was not required to be appointed. Aggrieved by the same, the revision petitioner is before this Court.

3.Heard the learned counsel on either side and perused the materials available on record.

4.Very perusal of the affidavit filed in support of the petition would indicate that the petitioner wants to have the Advocate Commissioner appointed to gather evidence with reference to the owners of the properties around the suit property and extent in their enjoyment. It is needless to state that an Advocate Commissioner cannot be appointed to gather evidence. The averment in the affidavit filed in support of the petition would clearly indicate that it is nothing but an attempt to gather evidence. The trial Court has rightly dismissed the application and this Court dose not see any reason to hold it otherwise. Accordingly, the civil revision petition is dismissed confirming the order passed by the learned Additional Subordinate Judge, Thanjavur District in I.A.No.156 of 2019 in O.S.No.220 of 2018 dated 13.02.2020. No costs. Consequently, connected miscellaneous petition is closed.

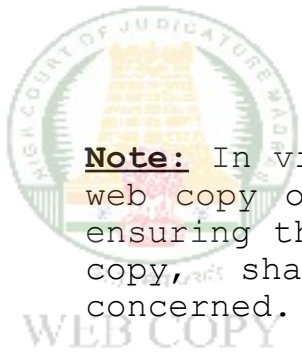
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Assistant Registrar (Crl side)

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Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Additional Subordinate Judge,
Thanjavur District.

+1 CC to M/s.S.DEENADHAYALAN, Advocate (SR-3199[F] dated
31/01/2022)

C.R.P. (MD) No.883 of 2020
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