



CRP(PD)(MD)No.1619 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.1619 of 2022 and
CMP(MD) No.7029 of 2022

M.Veera Perumal

... Petitioner

Vs

S.Jothi

... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India, to call for the records relating to the impugned fair and decreetal order dated 08.04.2022 made in I.A.No.1 of 2021 in A.S.No.6 of 2021, on the file of the Sub Court, Periyakulam and set aside the same.

For Petitioner : Mr.V.Janakiramulu

ORDER

This Civil Revision Petition is filed as against the order passed by the learned Subordinate Judge, Periyakulam in I.A.No.1 of 2021 in A.S.No.6 of 2021, dated 08.04.2022.



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2.The petitioner is the appellant and he suffered a decree in O.S.No.97 of 2010. The above suit was filed by the respondent/plaintiff as against the petitioner herein, for the relief of injunction. Pending the suit, the petitioner has taken a plea that he is in possession of the suit schedule property and also filed an application in I.A.No.253 of 2013, under Order 26 Rule 9 of Civil Procedure Code, to appoint an Advocate Commissioner. The said application was dismissed by the trial Court on 11.03.2015, which was challenged by this petitioner in CRP PD(MD) No.781 of 2015. This Court, by order dated 17.04.2015 dismissed the Civil Revision Petition. Thereafter, the suit was decreed in favour of the respondent/ plaintiff on 02.03.2021, against which, the petitioner/ defendant has filed an appeal before the Subordinate Court, Periyakulam in A.S.No.6 of 2021 and the same is pending. Pending the appeal, the petitioner has filed an Interlocutory Application in I.A.No.1 of 2021, for appointment of Advocate Commissioner. The said application was dismissed by the trial Court. Aggrieved over the same, the present Civil Revision Petition is filed.



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3.The learned counsel appearing for the petitioner submits that the petitioner is in possession of the property. He further submits that in the earlier order passed by this Court in CRP PD(MD) No.781 of 2015, it was held that the plaintiff has to prove his case and not the petitioner/defendant and hence there is no necessity for the petitioner/defendant to file the application for appointment of Advocate Commissioner. Now, decree has been passed in favour of the respondent/ plaintiff, against which, he preferred an appeal in A.S.No.6 of 2021, which is now pending on the file of the Subordinate Court, Periyakulam. In order to prove his possession, the petitioner/ defendant filed the application in I.A.No.1 of 2021, under Order 26 Rule 9 of Civil Procedure Code, for appointment of Advocate Commissioner. However, the first Appellate Court dismissed the application, based on the earlier order passed by this Court in CRP PD(MD) Nso.781 of 2015.

4.This Court considered the submissions made by the learned counsel appearing for the petitioner and also perused the



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materials placed on record.

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5.The suit in O.S.No.97 of 2010 was filed for the relief of injunction. Pending the suit, the petitioner /defendant filed an application in I.A.No.253 of 2013, under Order 26 Rule 1 of Civil Procedure Code, for appointment of Advocate Commissioner, which was rejected by the trial Court. Challenging the same, the petitioner filed Civil Revision Petition before this Court and the same was dismissed by this Court on 17.04.2015. Thereafter, the petitioner suffered a decree, which made him to file an appeal in A.S.No.6 of 2021 and pending the appeal, he once again filed an application under Order 26 Rule 1 of Civil Procedure Code, for the same relief, contending that he is in possession of the property and he wants to establish his case through the report to be filed by the Advocate Commissioner. The first Appellate Court has held that in the facts and circumstances of the case, there is no necessity for appointment of Advocate Commissioner and hence dismissed the application filed by the petitioner.



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6.It is settled position of law that for collection of evidence Advocate Commissioner need not be appointed. This Court is of the view that there is no reason to interfere with the order of the first Appellate Court. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No.

Internet : Yes / No.

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To

The Subordinate Court, Periyakulam



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B.PUGALENDHI, J.

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Order made in
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