



CRP(MD)No.2103 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.11.2022

CORAM:

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

CRP(MD)No.2103 of 2022
and
CMP(MD)No.9713 of 2022

1.Selvarani

2.Sudalaimuthu

: Petitioners

Vs.

Pathirakaliyammal

: Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records relating to the fair and decreetal order dated 19.04.2022 passed in I.A.No.2 of 2019 in O.S.No.68 of 2019 on the file of the Additional District Munsif Court, Thoothukudi and set aside the same.

For Petitioners : Mr.S.Muthumalai Raja

ORDER

The petitioners, as plaintiffs, have filed a suit in O.S.No.68 of 2019 before the Additional District Munsif Court, Thoothukudi for declaration of tile and



consequential injunction. Pending the suit, they have moved an interlocutory application in I.A.No.2 of 2019 under Order 26 Rule 9 CPC seeking appointment of an Advocate Commissioner for surveying the boundaries of the schedule properties. The trial court, by order dated 19.04.2022, dismissed the application and aggrieved over the same, the petitioners have moved the present revision.

2.Learned Counsel for the petitioners submitted that the petitioners filed the suit for declaration of title to the second plaintiff and consequential injunction regarding the third schedule property. The third schedule property is a part of the second schedule property which was received by the second plaintiff from her mother through a settlement deed dated 23.01.2019. Since the defendant tried to trespass and make constructions in the third schedule property, the plaintiffs have filed the suit and also sought for appointment of Advocate Commissioner. However, the same was negatived by the trial Court and therefore, he prayed for appropriate orders.

3.Heard the learned Counsel appearing for the petitioners and perused the available materials.



4.The trial Court dismissed the application for the appointment of the Advocate Commissioner holding that in a declaration suit, the plaintiffs have to establish their case through documents and not through the Advocate Commissioner's report. The trial Court further held that the very same issue has already been dealt with in a previous suit instituted by the plaintiffs' parents.

5.It appears that the parents of the plaintiffs have already filed a suit in O.S.No.408 of 2008 regarding the third schedule property for the same reliefs and it came to be dismissed. Against the same, they have preferred an appeal in A.S.No.33 of 2010, in which, an Advocate Commissioner was appointed through I.A.No.64 of 2011 and the Commissioner has also submitted his report [Ex.B3]. After considering the same, the lower appellate Court has dismissed the appeal and the issue is now pending before this Court in S.A.(MD)No.26 of 2019.

6.The plaintiffs' parents lost their case before the trial Court as well as the lower appellate Court. An Advocate Commissioner was appointed before the lower appellate Court and a report has also been filed. The plaintiffs admitted all these facts in their plaint and they have instituted this suit on the ground that the respondent / defendant is carrying out some constructions. There is no dispute



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with regard to the identity of the property and therefore, this Court feels that there is no need for reappointment of Advocate Commissioner, which was already done in the previous suit.

For the foregoing reasonings and discussions, this Court is not inclined to entertain this civil revision petition and the same is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
Internet : Yes
gk

10.11.2022

To

The Additional District Munsif,
Thoothukudi.



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B.PUGALENDHI, J.

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