



C.R.P.No.178 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2023

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.R.P.No.178 of 2023

Mrs.M.Buruhanisha

... Petitioner

Vs

1.Mr.G.Sankar

2.Mr.K.Jahir Hussain

3.Mr.A.Pachiyappan

... Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India to call for the records in I.A.No.5 of 2020 in O.S.No.38 of 2020 on the file of the Learned Additional Subordinate Judge, Chengalpattu and set aside the order and decretal order dated 31.10.2020 by the Learned Additional Subordinate Judge, Chengalpattu and allow the Civil Revision Petition by appointing Advocate Commissioner to inspect the A and B schedule of property mentioned in the plaint in O.S.No.38 on the file of the Learned Additional Subordinate Judge, Chengalpattu.



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For Petitioners : Dr.G.Krishnamurthy

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ORDER

The Civil Revision Petition is filed against the order dated 31.10.2020 passed in I.A.No.5 of 2020 in O.S.No.38 of 2020. The revision petitioner is the plaintiff and instituted a suit for declaration and injunction.

2. During the pendency of the suit, the revision petitioners/plaintiff filed an I.A.No.5 of 2020 under Order 26 Rule 9 of CPC to appoint an Advocate Commissioner, to inspect the suit schedule property, with the help of a District Inspector of Land Survey Department, to measure the boundaries as mentioned in the sale deed.

3. The Trial Court adjudicated the grounds on which the petition was filed for appointment of the Advocate Commissioner and made a finding that the revision petitioner filed an Interlocutory Application for the purpose of collection of further evidence. It is not in dispute that the revision



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petitioner/plaintiff filed certain documents including the sale deed which would contain the details regarding the suit schedule properties and through those documents, the petitioner has to establish his case for the purpose of getting the relief. For the purpose of measuring the boundaries as per the sale deed which was filed, an Advocate Commissioner cannot be appointed as the appointment of the Advocate Commissioner will create further complications in the matter of deciding the issues by the Trial Court.

4. Each party approaching the Court is expected to establish his case through his documents and evidence. The Advocate Commissioner may be appointed by the Court only if doubt arises in the mind of the Court and not in the mind of the parties. That being the principles to be adopted, this Court does not find any infirmity in respect of the order passed. The revision petitioner is at liberty to establish his case through the document and the evidence.



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5. Accordingly, the order 31.10.2020 passed in I.A.No.5 of 2020 in

O.S.No.38 of 2020 stands confirmed. Thus Civil Revision Petition stands

dismissed. However, there shall be no order as to costs.

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Speaking Order

Internet : Yes

Index: Yes

Copy to:

Additional Subordinate Judge, Chengalpattu.



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S.M.SUBRAMANIAM, J.

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