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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.08.2023**

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THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.3061 of 2019
and C.M.P.No.19693 of 2019

1.Suresh Kumar
2.Soumiyan

... Petitioners

Vs

Mary Julia Valarmathi

... Respondent

PRAYER:-Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to under Article 227 of the Constitution of India against fair and decreetal order dated 13.02.2019 passed in I.A.No.128 of 2019 in O.S.No.185 of 2013 by the learned Principal Sub-Judge, Puducherry.

For Petitioners : Mr.R.Thiyagarajan

For Respondent : Mr.R.Rajarajan

ORDER

This Civil Revision Petition has been filed to set aside the order dated 13.02.2019 passed in I.A.No.128 of 2019 in O.S.No.185 of 2013 by the learned Principal Sub-Judge, Puducherry.

2. The defendant is the petitioner. At the stage of arguments, on 25.01.2019, an application was filed for appointment of an Advocate



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Commissioner to survey the property in Town Survey No.3/1. The suit relates to Town Survey No.2/1. The property has been described with four boundaries and extent.

3. It is the duty of the plaintiffs to prove that they are the owners of the property. The defendant need not drag the burden on to herself in order to disprove the case of the plaintiff. There is no dispute in the identity of the property. According to the defendant, the Town Survey No.2/1 is the sub division of the Town Survey No.3/1. On the said premise, an Advocate Commissioner need not be appointed. An Advocate Commissioner is necessary to elucidate the facts in issue. The issue here is whether the plaintiffs are the owners of the property or not. For that purpose, appointment of an Advocate Commissioner is wholly unnecessary.

3. I am not non-suiting the petitioners on the grounds of delay. An application for appointment of an Advocate Commissioner can be filed even at the stage of the second appeal, if necessity arises. In this



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case, there is no necessity. As already stated, the plaintiff has properly described the suit scheduled property as required under Order VI Rule 4 of the Code of Civil Procedure. It is for the plaintiff to prove his case.

4. Therefore, I am not inclined to interfere with the order of the trial Judge. The order of the trial Court in I.A.No.128 of 2019 in O.S.No.185 of 2013, dated 13.02.2019 is confirmed. Being a suit for more than five years old, the learned trial Judge is requested to dispose of the case on or before 30.11.2023.

5. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

08.08.2023

gba

Index: Yes/ No

Speaking order: Yes/ No

Neutral Citations: Yes/ No

To
The Principal District Court, Tiruppur.

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