



CRP.No. 1995 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.07.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

CRP.No. 1995 of 2023

and

CMP.No. 12541 of 2023

1.A.M. Subramani
2.S.Malathy
3.S.Dhineshkumar
4.S.Yamini

... Petitioners

Versus

V.Chakravarthi

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, prays to set aside the fair and decretal order dated 12.12.2022 passed in I.A.No. 1 of 2022 in O.S.No. 30 of 2020 on the file of the District Munsif Cum Judicial Magistrate Court, Ranipet, Ranipet District.

For petitioners : Mr.P.Mani



CRP.No. 1995 of 2023

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ORDER

This Civil Revision Petition is filed seeking to set aside the fair and decretal order dated 12.12.2022 passed in I.A.No. 1 of 2022 in O.S.No. 30 of 2020 on the file of the District Munsif Cum Judicial Magistrate Court, Ranipet, Ranipet District.

2. The brief facts of the case are that the respondent/plaintiff has filed the suit in O.S.No. 30 of 2020 before the District Munsif Cum Judicial Magistrate, Ranipet District, for declaring the plaintiff's title and interest over the "B" schedule property and directing the defendants to deliver the vacant possession of the B schedule mentioned property. The defendants have contested the suit by filing written statement denying all the averments made in the plaint. During the pendency of the suit proceedings, the petitioners/defendants have filed IA.No. 1 of 2022 under Order 26 Rule 9 read with Section 151 of CPC seeking for appointment of Advocate Commissioner to inspect the "A & B" schedule mentioned property in the plaint with a direction to file a report along with plan with physical features of the property with measurements and boundaries. After



CRP.No. 1995 of 2023

WEB COPY

perusing the records, the Court below dismissed the application by order dated 12.12.2022. Against which, the petitioners/defendants have come forward with the present Civil Revision Petition.

3. According to the petitioners/defendants, they filed a petition under Order 26 Rule 9 CPC, seeking to appoint an Advocate Commissioner to inspect the “A&B” schedule mentioned property. The defendants are the family members. The plaintiff filed the suit for declaration and delivery of possession in respect of B schedule property. According to the petitioners/defendants, the suit schedule property, namely, EFGD in ABCD has been identified as a portion with super structure. However, there is no distinction between schedule “A” & “B” on the field. Therefore, it is just and necessary to appoint an Advocate Commissioner in the suit proceedings.

4. On the other hand, counter affidavit filed by the respondent before the Court below would reveal that the petitioners have no locus standi to file the application and Advocate Commissioner cannot be appointed to find out who is in the possession and enjoyment of the



CRP.No. 1995 of 2023

property. Further in EA.No. 3 of 2022 in OS.No. 67 of 1989, the Court below ordered the removal of the existing super structure and to hand over the vacant possession of the suit schedule property. As per the order, super structure was removed and possession was handed over to one Murugayan, who is the auction purchaser. The petitioners/defendants have trespassed into the property and put up a tiled house.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. It is relevant to note that in view of the order of the Court below dated 14.11.2006, on 21.02.2006 itself the property has been handed over to the respondent. Further, in O.S.No. 129 of 2009 the respondent's counsel relied on the judgment of this Court, wherein this Court has set out the guidelines while deciding the Advocate Commissioner applications. It is a settled proposition of law that the Advocate Commissioner cannot be appointed to fish out the evidences that who are in enjoyment and possession of the property. It is made clear that the order of the Court below, dated 14.11.2006 in EP.NO. 10 of 1996 in



CRP.No. 1995 of 2023

OS.No. 67 of 1989 was put to challenge before this Court in CRP.No.947 of 2005 and the same was dismissed.

7. On a further perusal of the records, it is seen that the petitioners/defendants have filed a suit in O.S.No. 129 of 2009 before the Principal District Court, Vellore seeking for declaration of title of the plaintiff's over the "B" schedule mentioned property therein and restraining the defendants, namely, Sampath and Murugayan therein from demolishing the Mangalore tiled house situated on the south west portion of the B schedule property. Therefore, the petitioners/defendants have not come out with clean hands and it is not known whether the schedule which he claims without proper description was the same schedule which he has filed in O.S.No. 129 of 2009 before the Principal District Court, Vellore and the same was dismissed for default and the same has attained finality. Hence, this Court does not find any reasons to interfere with the order passed by the trial Court.

8. Accordingly, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.



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CRP.No. 1995 of 2023

03.07.2023

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
MSM

To

1. The District Munsif Cum
Judicial Magistrate Court, Ranipet District.
2. The Section Officer, High Court, Madras.



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CRP.No. 1995 of 2023

V.BHAVANI SUBBAROYAN, J.

msm

CRP.No. 1995 of 2023



WEB COPY



CRP.No. 1995 of 2023

03.07.2023