



C.R.P.No.3500 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.09.2023

CORAM

THE HON'BLE MRS JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.3500 of 2023

and

C.M.P.No.21808 of 2023

M.Arunmathi

...Petitioner

Vs.

1.Madhivanan

2.S.Raja

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 12.12.2022 in I.A.No.176 of 2021 in O.S.No.350 of 2018 on the file of the II Additional Subordinate Judge, Villupuram.

For Petitioner : J.Agni Selvaraju

ORDER

This Civil Revision Petition has been filed by the petitioner challenging the fair and decreetal order dated 12.12.2022 in I.A.No.176 of 2021 in O.S.No.350 of 2018 on the file of the II Additional Subordinate



C.R.P.No.3500 of 2023

Judge, Villupuram.

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2. The suit was filed in O.S.No.350 of 2018 for declaration of title and possession of A and B Schedule properties, for recovery of the possession of B schedule property and for mandatory injunction directing the 1st defendant to remove the wall put up by him illegally and for cost.

3. According to the petitioner, the written statement was also filed with an imaginable allegation and according to the defendants 2 and 3 oral partition took place in the year 1990 deciding that Western portion of 10.5 ft of East West; and 140 North South was given to the petitioner's father and the middle portion measuring 10.5 East to West; 140 ft North South was allotted to the share of one Mathivanan and the Eastern West portion was given to the 2nd defendant and they denied the execution of the Will by the mother of the petitioner in favour of three parties. The 2nd respondent/defendant filed a written statement. He had also denied the existence of the 3 feet lane running from South to North and towards East West which is marked as IHGF in the plaint plan. They wantonly denied the



C.R.P.No.3500 of 2023

existence of the illegal wall put up in north and in his house and the existence of the lane and want to escape from the mandatory injunction. The existence of the wall and the lane can be proved only by way of appointing an Advocate Commissioner.

4. A counter was filed by the parties concerned stating that the properties were purchased by one Samy Kannu, in the name of his wife Munniyammal. The said Munniyammal had three sons and three daughters. Munniyammal and her three daughters consented for the oral partition in the year 1990 and the properties were orally partitioned between the father and respondents 1 and 2. The petitioner's father constructed a shop on the Southern side in his portion. Everybody has constructed and the only lane available on the Eastern side of the portion of the petition mentioned property and they are in possession and enjoyment of the property from the year 1990. Therefore, there is no reason for appointment of an Advocate Commissioner. The plaintiff, himself has stated that his father, owned a shop and that the 1st defendant had illegally trespassed upon his house property. In spite of notice to his father on 02.07.2012. Therefore, the



C.R.P.No.3500 of 2023

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plaintiff's father wrote a letter to the 1st defendant on 11.07.2014 asking him to remove the encroachment made by him during the 1st week of July 2014 and handover the vacant possession.

5. Now at this juncture, appointment of Advocate Commissioner is not necessary. It is only to fill up the lacunae in their evidence and the same cannot be permitted. The trial Court after considering the averments, dismissed the said application. Aggrieved over the same, the petitioner has filed the present Revision.

6. It is seen that in the I.A., the learned counsel seeks for, when the defendants had denied the existence of the three feet lane running from South to north and then towards West, which is marked as I HGF to the plaintiff and to the North of his house, there is an illegal wall put up and the existence lane and they are denying the right, he wanted to appoint an Advocate Commissioner. Whether possession was not proved by him and according to the petitioner herein, there was a Will executed and the said Will also talks about the lane available as alleged. There is no mentioning about the lane or any wall. That being the case, the petitioner has to prove



C.R.P.No.3500 of 2023

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the existence of the lane and whether there was a partition has to be proved by him and not by collecting evidence by appointing an Advocate Commissioner to prove whether there was there or any other structures available. It is for the petitioners to prove as he is holding the property even assuming from the date of execution of the said Will, he is entitled for the same. All these has to be proved by him. There is no other materials available to him and it is for him to let-in appropriate evidence before the Court below and not by collecting evidence.

7. With the above observation, this Civil Revision is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

25.09.2023

Index : Yes/No
Speaking : Yes/No
NCC : Yes/No
gba



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C.R.P.No.3500 of 2023

V.BHAVANI SUBBAROYAN.J.,

gba

To:
The Additional Subordinate Judge – II,
Villupuram.

C.R.P.No.3500 of 2023
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C.M.P.No.21808 of 2023

25.09.2023