



C.R.P.No.2953 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2023

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.No.2953 of 2019
and C.M.P.No.19090 of 2019

1. M.Kirubanandhan
2. M.Pradeepkumar

.. Petitioners

Vs.

1. Senthil
2. Periyannan @ Mookka Gounder
3. Natesan
4. Rajamani
5. Kamalesan
6. Vengan
7. Kumar
8. Azhagesan

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 30.01.2019 against I.A.No.409 of 2018 in O.S.No.181 of 2015 on the file of District Munsif Court, Harur and to allow the Civil Revision Petition.

For Petitioners : Mr.C.Prabakaran

For Respondents

R1 to R8 : Notice served
No appearance



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ORDER

WEB COPY This Civil Revision Petition has been filed as against the fair and decreetal order dated 30.01.2019 against I.A.No.409 of 2018 in O.S.No.181 of 2015 on the file of District Munsif Court, Harur, thereby dismissing the petition seeking appointment of an Advocate Commissioner.

2. The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed a suit for permanent injunction as against the respondents in respect of the suit property. On receipt of suit summons, the respondents filed their written statement stating that if the petitioners approached the Trial Court with clean hands they would have filed an application for appointment of an Advocate Commissioner in order to find out the truth.

3. Therefore, the petitioners filed an application seeking appointment of an Advocate Commissioner to survey the suit property with the help of a surveyor and a Village Administrative Officer and to file a report with the plan. The same was dismissed, on the ground that the suit itself filed for permanent injunction and as such in the said suit,



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appointment of an Advocate Commissioner would amount to gather evidence.

4. The Hon'ble Supreme Court of India and this Court repeatedly held that the Advocate Commissioner can be appointed for the purpose of demarcation in respect of the suit land, since the suit property is situated adjacent to the property owned by the defendants. Further, this Court has got power, which is discretionary in nature to appoint Commissioner for the purpose of ascertaining, to made it clear intelligible and to throw light upon the matter in issue means the main dispute as well as the facts leading to the dispute. Therefore, the appointment of an Advocate Commissioner will not cause any prejudice to the respondents.

5. Further, in the suit for injunction to restrain the defendants from interfering with the possession due to alleged encroachment into the land of the plaintiffs, one of the methods to find out as to whether or not there is encroachment is to have the local investigation done by a competent Commissioner.



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6. Therefore, this Court finds infirmity in the order passed by the Court below and it is liable to be set aside. The Court below is directed to appoint an Advocate Commissioner and on receipt of Advocate Commissioner's report, dispose of the suit, within a period of six months thereafter.

7. Accordingly, the fair and decreetal order dated 30.01.2019 against I.A.No.409 of 2018 in O.S.No.181 of 2015 on the file of District Munsif Court, Harur, is hereby set aside. The Civil Revision Petition stands allowed. Consequently, connected Miscellaneous petition is closed. No costs.

01.03.2023

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

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To

The District Munsif Court, Harur.

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