



CRP.No. 1757 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

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and

CMP.No.11411 of 2023

A.P. Gajendra Kumar @ Chandran

... Petitioner

Versus

1.Latha

2.Bhuvaneshwari @ Pavithra

.. Respondents

Civil Revision Petitions filed under Article 227 of the Constitution of India, prays to set aside the order passed in I.A.No. 3 of 2022 in O.S.No. 5 of 2021 dated 23.03.2023 on the file of District Munsif of Coonoor, Nilgiris.

For Petitioner : Mr.C. Deivsigamani

For Respondenets: Mr.M. Rajasekar

ORDER

This Civil Revision Petition has been filed seeking to set aside the order passed in I.A.No. 3 of 2022 in O.S.No. 5 of 2021 dated 23.03.2023 on the file of District Munsif of Coonoor, Nilgiris.



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2. The revision petitioner herein is the plaintiff and the respondents herein are the defendants in the original suit.

3. The case of the petitioner is that he has filed the suit in O.S.No. 5 of 2021 before the District Munsif, Coonoor, The Nilgiris, for permanent injunction restraining the defendants from putting up any sort of construction temporary or permanent or putting private road by encroaching the plaintiff's property on the western side morefully described in the schedule or in any way disturbing the plaintiff's peaceful possession and enjoyment of the schedule mentioned property. While pending the suit, the petitioner/plaintiff has filed application in I.A.No. 3 of 2022 under Order 26 Rule 9 CPC, seeking to appoint an Advocate Commissioner to visit the suit property for measurement of the suit property by a qualified surveyor and to fix survey stones in the suit property and to file a detailed report and survey map of the suit property. After perusing the records, the Court below dismissed the application by order dated 23.03.2023. Aggrieved by the said order, the petitioner/plaintiff has come forward with the present Civil Revision Petition.



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4. The learned counsel for the revision petitioner contended that the petitioner has purchased the schedule mentioned property measuring to an extent of 1308 sqft of land from the first respondent. After purchasing the same, there was some deficit of measuring to an extent of 120 sqft in the schedule mentioned property. In this regard, when the petitioner approached the first respondent, she gave an undertaking to give deficit of land 120 sqft. Therefore, it has become necessary in order to decide the exact area of the suit property to appoint an Advocate Commissioner with a qualified surveyor. Hence, the petitioner/plaintiff prays to set aside the finding of the Court below.

5. On the other hand, the learned counsel for the respondents/defendants contended that the petition amounts to collecting of evidence to ascertain the possession which is prohibited under law.

6. Heard both sides and perused the materials available on record.

7. On a perusal of the records, it is seen that the suit was filed for permanent injunction against the defendants. Subsequently, the



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petitioner/plaintiff filed an application for appointment of Advocate Commissioner in order to inspect the suit property and fix the boundary stones. The reason adduced by the petitioner/plaintiff in the aforesaid application is that the respondents gave an undertaking to compensate the deficit found in the suit property measuring to an extent of 120 sqft., as the respondents had denied the same in the written statement and therefore, the petitioner prayed for appointment of Advocate Commissioner to find the ground reality. Therefore, the petitioner prayed for appointment of Advocate Commissioner to inspect the suit property and fix the survey stones in the suit property with the help of government surveyor amounts to collection of evidence by the petitioner. The property has been purchased from the first respondent measuring to an extent of 1308 sqft. Now, the petitioner/plaintiff finds that there is a deficit measuring to an extend of 120 sqft., when he approached the 1st defendant, she has given an undertaking to give deficit of 120 sqft., of land. But, now, in the written statement she denies that she has not sold the property measuring to an extent of 120 sqft. Therefore, the petitioner has filed a petition for appointment of Advocate Commissioner to measure the property. But the first respondent has opposed the petition that there is no deficit of land and



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the petitioner's intention is to extract evidence through appointment of Advocate Commissioner. Hence, the trial Court has accepted the respondenets' plea and dismissed the petition for appointment of Advocate Commissioner.

8. Considering the above facts and circumstances of the case, this Court directs the Court below to proceed with the trial and to dispose of the suit in O.S.No. 5 of 2021 pending on the file of the District Munsif of Coonoor, The Nilgiris, as expeditiously as possible.

9. With the above direction, the Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

11.07.2023

Speaking order : Yes/No
Neutral citation : Yes/No
Msm

To

1. The District Munsif, Coonoor, Nilgiris.
2. The Section Officer, High Court, Madras.



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V.BHAVANI SUBBAROYAN, J.

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