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CRP.No. 2832 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No. 2832 of 2023

and

CMP.No. 17542 of 2023

1.T.Venkatesh
2.T.Narayanappa

...Petitioners

Versus

N. Ragavendra

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, prays to set aside the fair and decretal order in I.A.No. 2 of 2022 in O.S.No. 144 of 2022 on the file of the District Munsif Cum Judicial Magistrate No. I, Hosur, dated 21.12.2022.

For Petitioners : Mr.S. Nedunchezhiyan
For Mr.M.P. Saravanan

**ORDER**

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This Civil Revision Petition has been filed seeking to set aside the fair and decreetal order in I.A.No. 2 of 2022 in O.S.No. 144 of 2022 on the file of the District Munsif Cum Judicial Magistrate No. I, Hosur, dated 21.12.2022.

2. The case of the petitioners/defendants is that the suit properties originally belonged to one Munisamy. There was an oral partition among the family members, in which, the suit properties were allotted as the share of Munisamy for his maintenance. The petitioners/defendants took care of Munisamy during his old age. The said Munisamy orally conveyed the suit properties in favour of the petitioners towards love and affection. After his demise, the petitioners are in possession and enjoyment of the suit properties. The petitioners filed petition before the Tahsildar for granting Patta name Transfer. Since the suit properties belonged to Munisamy, the documents executed in favour of the respondent with regard to the suit properties are invalid and not binding on the petitioners herein. Therefore, the petitioners pray to set aside the findings of the trial Court.



3. On the other hand, the petitioners have admitted the partition deed bearing Doc.No. 74 of 1995 in the year of 1995 itself and the same was remains unchallenged. The petitioners have no right, title and interest over the suit properties. The Tahsildar denied to grant patta for the suit properties in favour of the petitioners. After conducting enquiry, the Patta was granted in favour of the petitioners by the Revenue Officials concerned. Hence, the petitioners cannot claim possession through appointment of Advocate Commissioner. No documents were filed in support of the contentions of the petitioners. Therefore, the above Civil Revision Petition is liable to be dismissed.

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

5. It is well settled position that an Advocate Commissioner cannot be appointed to collect evidence and the parties have to establish their case only by oral and documentary evidence. In the case on hand, the suit has been filed for declaration and permanent injunction. As rightly pointed out by the Trial Court, a Commissioner cannot be appointed to collect evidence



and substantiate the right over the property. The petitioner has to prove his case by adducing evidence before the Trial Court. I do not find any error or irregularity in the order passed by the Trial Court. The Civil Revision Petition is devoid of merits and liable to be dismissed.

6. In the result, the Civil Revision Petition fails and it is dismissed accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

22.08.2023

Index : yes/no

Internet : yes/no

MSM

To

1. The District Munsif Cum
Judicial Magistrate No. I, Hosur.

2. The Section Officer
V.R. Section, High Court
Madras.



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V.BHAVANI SUBBAROYAN, J.

MSM

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