



C.R.P. No. 2115 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.07.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. No. 2115 of 2023

and

C.M.P.No.12891 of 2023

Mrs. Saraswathi

...Petitioner

.Vs.

1.Palaniammal

2. Thangarasu

3. Sumathi

...Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 27.01.2023, passed in I.A.No.4 of 2022, in O.S.No.88 of 2022, on the file of the District Munsif Court, Paramathi, Namakkal District and allow the above Civil Revision petition and pass orders.

For Petitioner : Mr. K. Venkatesan



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ORDER

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This petition is filed to set aside the order dated 27.01.2023, passed in I.A.No.4 of 2022, in O.S.No.88 of 2022, on the file of the District Munsif Court, Paramathi, Namakkal District and allow the above Civil Revision petition.

2. The case of the petitioner is that the petitioner has filed the above suit challenging the settlement deed executed by one Pappayee Ammal/Mother of the first respondent in Doc No.493 of 2015 to the first respondent and another settlement deed executed by first respondent to the third respondent in Doc. No. 977 of 2022. Both the documents are executed in the Sub Registrar Office, Paramathi. The grievance of the petitioner is that the subject property is her ancestral property and the same was purchased by her father. When this being the case, the petitioner filed the I.A.No.4 of 2022, in O.S.No.88 of 2022, on the file of the District Munsif Court, Paramathi, Namakkal District seeking for appointment of Advocate Commissioner to demarcate the subject property by metes and bounds. The Trial Court had dismissed the I.A. Hence this petition.



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3. The learned counsel for the petitioner submitted that the said Pappayee Ammal who had executed the settlement deed to the first respondent has no right to do so. He further submitted that the learned Judge ought to have allowed the I.A filed by the petitioner for appointing an Advocate Commissioner in order to establish his case. He further stated that while executing the settlement deed the property was undervalued with an intention to cause loss to the Government and to pay the lesser stamp duty/ Hence prays to allow this petition.

4. In view of the above, it is made clear that the petitioner has filed the suit seeking to declare the settlement deed executed with regard to the subject property as null and void and she itself filed an I.A seeking for appointment of Advocate Commissioner. Hence the learned Judge has dismissed the I.A on the ground that if the petitioner wanted to declare the settlement deed executed as null and void, she has to substantiate her case by producing the relevant documents and evidence and proceed the case further. It is a well settled position that an Advocate Commissioner under



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Order II Rule IX cannot be appointed if there is no dispute in identifying the property.

5. Therefore, this Court find no infirmity in the order dated 27.01.2023, passed in I.A.No.4 of 2022, in O.S.No.88 of 2022, on the file of the District Munsif Court, Paramathi, Namakkal District and the same is confirmed. Therefore, the relief sought for by the petitioner cannot be granted.

6. In the above circumstances, this writ petition fails and the same is dismissed. No order as to costs. Consequently, the miscellaneous petition is closed.

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smn

Index : Yes/No

Internet: Yes/No

To.

District Munsif Court, Paramathi, Namakkal District

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V.BHAVANI SUBBAROYAN,J.
Smn

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