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CRP.No. 2607 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

CRP.No. 2607 of 2022
and
CMP.No. 13389 of 2022

Babu (Deceased)
B.Senthilkumar

... Petitioners

Versus

1.B.Paranthaman
2.B.Ratanakumar
3.B.Ratanavel
4.R.Vinoth
5.N.Padmanathan

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, prays to set aside the order dated 27.04.2022 in IA.No.3 of 2021 in O.S.No. 148 of 2016 on the file of the learned District Munsif, Maduranthakam.

For Petitioner : Mr.V. Chandrakanthan

For RR1&2 : Mr.P. Krishnan

For RR3 to 5 : No Appearance



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ORDER

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This Civil Revision Petition has been filed seeking to set aside the order dated 27.04.2022 in IA.No.3 of 2021 in O.S.No. 148 of 2016 on the file of the learned District Munsif, Maduranthakam.

2. The case of the petitioners/plaintiffs filed a suit in O.S.No. 148 of 2016 on the file of the District Munsif, Madurantakam, for permanent injunction and mandatory injunction. The respondents/defendants have contested the suit by filing written statement denying all the averments made in the plaint. During the pendency of the suit proceedings, the petitioners/plaintiffs filed I.A.3 of 2021 under Order XXVI Rule 9 CPC, to appoint an Advocate Commissioner to inspect, measure and note down the physical features of the suit schedule property in the suit. After perusing the records, the trial Court dismissed the application by order dated 27.04.2022. Aggrieved by the same, the petitioners/plaintiffs have come forward with the present Civil Revision Petition under Article 227 of the Constitution of India.

3. According to the petitioners/plaintiffs, originally, the father of the



1st petitioner is the owner of the Gramanatham property measuring to an extent of around 8 cents together with pacca compound wall frontage eastern side 28 feet-breadth with gate and 15 feet length on the northern side and 900 sqft house, comprised in old survey No. 166 (part) and new survey no. 218/29 situated at No. 14, Muthumariammal Koil Street, A.V. Nagar, Melavalam Village, Karunguzhi Town Panchayat, Madurantakam Taluk, Kancheepuram District within the Registration District of South Chennai and Sub Registration District of Madurantakam morefully described as the suit schedule.

4. According to the petitioner, the 1st plaintiff is the absolute exclusive owner of the suit schedule property enjoying the same as absolute owner without any disturbance from 1975 for the past 41 years and that the Government issued the patta No. 67 in Gramanatham in the year 1994 in favour of the first plaintiff. The petitioners/plaintiffs paid property tax for the suit property. The 1st petitioner has constructed house with pucca compound wall before 30 years for frontage eastern side 28 feet breadth with gate and 15 feet length on the northern side and remaining 110 feet length without compound and the petitioners are enjoying the property without disturbance as uninterrupted absolute owner for the past 41 years. The 1st petitioner executed settlement deed dated 10.11.2008 in favour of her and the same was registered



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as Doc.No. 5909 pf 2008 at Sub Registrar Office, Madurantakam and both are

enjoying the suit property and the first plaintiff is maintaining the suit schedule property. The respondents and their henchmen not allowed them to do any work in the suit schedule property. The respondents 1&2 are filed a suit in O.S.No. 45 of 2017 before the Court below, the suit filed by the defendants is unsustainable in law and untenable. The suit property is Gramanatham property measuring to an extent of about 8 cents together with pucca compound wall frontage eastern side 28 feet breadth with gate and 15 feet length on the northern side and 900 sqft house comprised in Old Survey No.166 (part) and new Survey No. 218/29 situated at No.14, Muthumariammal Koil Street, A.V.Nagar, Melavalam Village Karunguzhi Town Panchayat, Madurantakam Taluk, Kancheepuram District within the Registration District of South Chennai and Sub Registration District of Madurantakam. The respondents 1&2 with the criminal intension in order to grab the petitioners/plaintiffs property are taking steps to encroach upon the suit property and construct the compound wall and sunshade. The action of the respondents/defendants are illegal and unfair.

5. On the other hand, the suit was filed by the petitioner in O.S.NO.



148 of 2016 and thereafter, the respondents filed a suit in O.S.No.45/2017 before the Court below for declaration and recovery of possession and the application of the Advocate Commissioner which was allowed by the Court below in IA.No.712 of 2017 in O.S.No. 45 of 2017. The suit properties in both the suits are one and the same. However, the suit in IA.No. 712 of 2017 in O.S.No. 45 of 2017 the Court appointed Advocate Commissioner and the Advocate Commissioner was also measured the suit properties and a report was filed by the Advocate Commissioner which was clearly disclosed that the present petitioner had encroached the property of the respondents under B schedule mentioned property in the suit in O.S.No. 45 of 2017. In both the suits, the measurement of the suit properties already reached finality. Therefore, the present application after commencement of special list on 13.09.2021 is not at all maintainable. Hence, the above Revision is liable to be dismissed.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the materials available on record.

7. It is well settled position that an Advocate Commissioner cannot



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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.

8. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.09.2023

Index: Yes/No
Speaking order/Non-speaking order
Neutral Citation: Yes/No
MSM

V.BHAVANI SUBBAROYAN, J.



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