



C.R.P.No.2342 of 2023 &
C.M.P.No.14346 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.07.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.2342 of 2023 &
C.M.P.No.14346 of 2023

Sanjeev Kumar

... Petitioner

Vs.

1. Rajaram

2. Venkat

...Respondents

Civil Revision Petition filed under Article 227 of the Code of Civil

Procedure to set aside the fair and decretal order dated 15.03.2023 made in

I.A.No.2 of 2020 in O.S.No.223 of 2020 on the file of the learned V Additional

District Court, Coimbatore and allow the said I.A., by allowing the CRP

For Petitioner : Mr. P.Sivakumar

ORDER

The present Civil Revision Petition filed under Article 227 of the Code of Civil Procedure to set aside the fair and decretal order dated 15.03.2023 made in I.A.No.2 of 2020 in O.S.No.223 of 2020 on the file of the learned V Additional District Court, Coimbatore and allow the said I.A., by allowing the CRP.

2. According to the petitioner, he has filed the suit in O.S.No.223 of



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2020 to declare the title of the suit property belongs to the petitioner / plaintiff

and to grant consequential permanent injunction in favour of the petitioner.

Pending suit I.A.No.2 of 2020 was filed by the petitioner seeking to appoint Commissioner to visit the suit property and to file a report along with rough plan. The said petition was dismissed on 15.03.2023, challenging the said order, the petitioner has come up with the present petition.

3. The learned counsel for the petitioner would submit that the learned Judge failed to appreciate the case of the petitioner in a proper perspective and failed to exercise the jurisdiction vested under Order 26 Rule 9 and Section 151 of Civil Procedure Code.

4. The learned counsel for the petitioner also submits that the court below ought to have seen that the report and plan of the commissioner shall give replica of what is available on the suit property and the same would enlighten and throw much light upon the particular nature of the property. The learned judge ought to have seen that as such, the petitioner is not attempting to collect evidence.

5. Heard the learned counsel for the petitioner and perused the



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documents placed on record carefully.

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6. Now, the points for consideration are:

(1) Whether the order of the Court below suffers from any illegality warranting interference of this Court under Article 227 of the Constitution of India?

2) Whether the Court below failed to exercise jurisdiction vested with it?

7. The object of local inspection under Order XXVI Rule 9 of CPC is to collect evidence at the instance of the party who relies upon the same and which evidence cannot be taken in the Court, but could be taken only from its peculiar nature on the spot. When the evidence will necessitate that part of the evidence will elucidate a point, which may otherwise be left in doubt or ambiguity on record. Advocate Commissioner, in effect, is a projection of the Court appointed for a particular purpose. The report of the Commissioner within the suit shall form part of the record. The local investigation is the best way to find out the possession when there is dispute regarding identity of the property. Under the guise of local investigation, party who is making application will not be allowed to collect the evidence. The Court must keep



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these factors in mind while ordering or rejecting application for appointment of Advocate Commissioner basing on facts of each case.

8. Admittedly, in a suit for declaration and injunction, the purpose of appointment of Commissioner was to collect evidence, the rejection for appointment of Commissioner is a proper one, as opined by the **Hon'ble Madras High Court in Raja vs Narashimamurthy (2011), C.R.P.PD. No. 3163 of 2009, dt. 01.08.2011.** It is provided under Order XXVI Rule 9 of Civil Procedure Code that in any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person, as it thinks fit directing him to make such investigation and to report thereon to the Court. In the case on hand, there is no dispute regarding identity or location of plaint schedule property and hence, to visit the property and to file plan along with rough sketch does not arise. The parties to the suit should prove their case by themselves by letting in legally acceptable evidence and the report of the advocate commissioner can only aid the Court in evaluating the evidence to come to a just conclusion. In fact, with regard to the factum of possession, the court alone



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can gather evidence through the parties and it cannot entrust the said matter to the advocate commissioner to collect the evidence. In view of the same, this Court finds no illegality in order passed by the Court below in declining to appoint advocate commissioner. Hence, this revision is liable to be dismissed.

Accordingly, this Civil Revision Petition is dismissed at the stage of admission. No costs. As a sequel, all pending miscellaneous application shall stand closed.

17.07.2023

Index : Yes/No
Internet : Yes/No
Speaking order / non speaking order
ssd

To

The V Additional District Court,
Coimbatore

V.BHAVANI SUBBAROYAN, J.,

ssd

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