



Crp.No. 2400 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.07.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

CRP.No. 2400 of 2023

Saraswathi

... Petitioner

Versus

Durai @ Somasundaram

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, prays to set aside the judgment and decree dated 23.03.2023 made in I.A.No. 3 of 2023 in O.S.No. 1373 of 2013 on the file of the Principal District Munsif Court, Coimbatore.

For petitioner : Mr. N. Manoharan

For Respondent : Mr. C.R. Prasanna for Caveator

ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decretal order dated 23.03.2023 made in I.A.No. 3 of 2023 in O.S.No. 1373 of 2013 on the file of the Principal District Munsif Court,



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Coimbatore.
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2. The respondent/plaintiff has filed the suit in O.S.No. 1373 of 2013 before the District Munsif Court, Coimbatore, for permanent injunction restraining the defendant from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The petitioner/defendant has filed her written statement in the suit and contested her case. While pending the suit proceedings, the petitioner/defendant has filed I.A.No. 3 of 2023 under Order 26 Rule 9 of CPC., seeking to appoint an Advocate Commissioner to note down the physical features and age of the suit property with the help of the qualified Engineer and to file a report before the Court below. After perusing the records, the trial Court dismissed the application by order dated 23.03.2023. Aggrieved by the said order, the petitioner/defendant has come forward with the present Civil Revision Petition.

3. According to the petitioner/defendant, she is in possession and enjoyment of the suit property since 1983 after obtaining approval from the competent authority concerned and all the Revenue Records stand in



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the name of the petitioner/defendant. However, the petitioner's house is one of the part of the disputed property in question. The respondent/plaintiff has not stated in the plaint about the house of the petitioner/defendant. Hence, the petitioner/defendant seeking for appointment of Advocate Commissioner to note down the physical features, age of the suit property and take a photograph with the help of the qualified Engineer and submit a report before the trial Court. Hence, the petitioner/defendant seeks to set aside the order of the trial Court.

4. Per contra, the respondent/plaintiff gave an evidence before the Court below and marked documents. The petitioner/defendant has partly cross-examined. After getting several adjournments, the petitioner/defendant has filed the application in I.A.No. 847 of 2018 for appointment of Advocate Commissioner and the same was dismissed on 01.10.2021 by the trial Court. Therefore, there is no need to appoint an Advocate Commissioner to inspect the disputed property in question. Hence, the above Revision is liable to be dismissed.

5. Heard both sides and perused the records.



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6. On a perusal of the records, it reveals that the suit was filed by the respondent/plaintiff for permanent injunction restraining the petitioner/defendant from in any manner to interfere with the plaintiff's peaceful possession and enjoyment of the suit property. The earlier application filed by the petitioner/defendant in I.A.No. 847 of 2018 seeking for appointment of Advocate Commissioner to note down the physical features and to assess the age of the disputed property in question and the same was dismissed by the Court below on 01.10.2021. Thereafter, the petitioner/defendant has filed a suit in O.S.No. 653 of 2010 against the respondent/plaintiff. Subsequently, she has filed I.A.No.1 of 2022 under Section 10 of CPC., seeking to stop further proceedings in the suit until commencement of the trial and it was also dismissed. Thereafter, the trial was commenced, witnesses have also been examined and finally the above suit was posted for petitioner/defendant's side arguments. At this juncture, once again, she has filed another application in I.A.No. 3 of 2023 under Order 26 Rule 9 of CPC seeking for appointment of Advocate Commissioner to note down the physical



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features and age of the disputed property in question. In the suit, the respondent/plaintiff has objected before the trial Court. Therefore, there is no *bona-fide* reasons/facts narrated in the above Revision and this Court is of the view that the petitioner filed the above applications only to drag on the suit proceedings. Hence, there is no merit in the above Revision and this Court is not inclined to allow the above Revision. There is no illegality or irregularity in the impugned order passed by the Court below and the Civil Revision Petition fails and it is dismissed.

7. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
MSM

To

1. The Principal District Munsif Court, Coimbatore.
2. The Section Officer, High Court, Madras.



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V.BHAVANI SUBBAROYAN, J.

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