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C.R.P.(PD)No.2604 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.2604 of 2019 and
CMP.Nos.17145, 17147 & 17148 of 2019

1.K.Venkatesh
2.Shanthi

.. Petitioners

VS

1.Sumithradevi
2.Suganthi
3.Suganya
4.Sheela Rani
5.Balraj
6.Prithiviraj

.. Respondents

Petition filed under Article 227 of the Constitution of India against the docket Order dated 08.07.2019 in I.A.No.3 of 2019 in O.S.No.880 of 2019 on the file of III Additional District Munsif Court, Coimbatore.

For Petitioners : Mr.T.M.Hariharan

For Respondents : No Appearance

ORDER

The civil revision petition arises against an order passed under Order 26 Rule 9 of the CPC. An application for appointment of an



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Advocate Commissioner was filed in I.A.No.3 of 2019 in O.S.No.880 of 2019. The claim of the plaintiffs is that they entered into an agreement with the defendant, who agreed that the property will be divided in the ratio of 1:5.

2. According to them, the defendant, who is their sibling, is having an intention to prevent the access to the suit property including ingress and egress. The civil revision petitioners are third parties to the suit. They claim that the property was purchased by them from the father of the plaintiffs and defendant, as early as in the year 1991. In other words, they deny the title of the plaintiffs and the defendant. In pursuance thereof, they filed an application to implead themselves as party defendants to the suit. Perhaps, it is to prevent a shadow fight between the plaintiffs and sole defendant.

3. Heard Mr T.M. Hariharan, learned counsel appearing for the petitioners. The respondents, who have been served have not entered appearance in the proceedings.

4. Mr. T.M. Hariharan, learned counsel appearing for the petitioners would state that the impleading application is still kept pending. In the meanwhile, an Advocate Commissioner is ought to be appointed for the purpose of noting down the physical features of the property, which is in



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possession of the civil revision petitioners.

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5. In a suit for injunction filed by one co-owner against the other and when there is no dispute in identity of the property, the issue of appointing Advocate Commissioner does not arise. Apart from that, the Court below had before it, the civil revision petitioners, who claim that they are the owners of the property and they ought to have been heard prior to passing the order.

6. When the civil revision petitioners claim that they are in possession and when there is no dispute to identity of the property, I am surprised that an Advocate Commissioner has been appointed. The appointment of an Advocate Commissioner is for elucidation of matters in issue. It is not for asking and it can never be to assist one party to fish for evidence as against the other. The trial Court should have followed the proper procedure. It should have considered the impleading application filed by the civil revision petitioners first and thereafter, taken up the application for appointment of an Advocate Commissioner. This is because of the claim of the petitioners that they are in possession of the property by virtue of prior sale.

7. In light of the above, I am passing the following order:

(i) the order impugned is set aside;



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(ii)the learned Judge is requested to take up the impleading application first and thereafter, if it finds necessary, the application for appointment of Advocate Commissioner;

(iii)at the present stage, the visit of an Advocate Commissioner especially when it is resisted by the impleading parties is unnecessary;

(iv)the merits of the Commissioner application can be gone into by the trial Court after taking a decision as to whether the civil revision petitioners are proper and necessary parties to the suit.

8.With the above directions, this civil revision petition is allowed. The order dated 08.07.2019 is set aside. The Advocate Commissioner need not visit the suit property. I.A.No.3 of 2019 is not dismissed, only the order passed by the Court below is set aside. The Court shall take a call on the application after deciding on the necessity to implead the petitioners herein. No costs. Consequently, connected miscellaneous petitions are closed.

25.07.2023

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

vs

To

The III Additional District Munsif Court,
Coimbatore.



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V. LAKSHMINARAYANAN,J.

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