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C.R.P.No.2638 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.2638 of 2019

and

C.M.P.No.17447 of 2019

1. N.V.Gunasekaran

2. N.V.Pattabiraman

....

Petitioners

Vs

Divij Jain

represented by his

General Power of Attorney

Sanjay Kumar Jain

No.93, Park Street,

Kolkatta,

West Bengal.

....

Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and final order dated 05.01.2019 made in I.A.No.106 of 2018 in O.S.No.97 of 2015 on the file of the Subordinate Judge, Udthagamandalam.

For Petitioners : Mr.N.Damodaran

For Respondent : Mr.L.Mouli

ORDER

This Civil Revision Petition has been filed to set aside the fair and final order dated 05.01.2019 passed in I.A.No.106 of 2018 in O.S.No.97 of 2015 on the file of the Subordinate Judge,



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Udhagamandalam, thereby allowing the petition seeking appointment of an Advocate Commissioner to measure the suit property with the help of surveyor and file a report.

2. The petitioners are the defendants and the respondent is the plaintiff. The respondent filed a suit for recovery of possession, injunction and mandatory injunction. Pending suit, the respondent filed an application seeking appointment of Advocate Commissioner to inspect the suit property in order to ascertain the encroachment made in the suit property by the petitioners herein.

3. The learned counsel appearing for the petitioners would submit that without even identifying the suit property, the respondent filed a suit in order to gather evidence and sought for appointment of Advocate Commissioner. Therefore, the Advocate Commissioner ought not to have appointed in this case. It would amount to gathering of evidence.

4. A perusal of the records reveals that the respondent filed a suit for recovery of possession and in order to find out the encroachment



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in the suit property, he filed an application for appointment of Advocate Commissioner. Therefore, the Court below rightly appointed the Advocate Commissioner in order to find out the encroachment in the suit property. It would be very useful for the Court below to decide the suit.

5. Therefore, this Court finds no infirmity or illegality in the order dated 05.01.2019 passed in I.A.No.106 of 2018 in O.S.No.97 of 2015 on the file of the Subordinate Judge, Udhagamandalam. Accordingly, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

03.03.2023

Index:Yes/No
Internet:Yes/No
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To
The Subordinate Judge,
Udhagamandalam.



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G.K.ILANTHIRAIYAN, J.

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