



CRP.No. 3121 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

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and

CMP.No. 19348 of 2023

1.Ramesh

2.Rani

3.Anitha

.. Petitioners

Versus

Sivakami

.. Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, prays to set aside the fair and decreetal order dated 22.08.2022 made in I.A.No. 416 of 2022 in O.S.No. 117 of 2021 on the file of the District Munsif, Dharmapuri.

For Petitioners : Mr.C.Prabakaran



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ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decreetal order dated 22.08.2022 made in I.A.No. 416 of 2022 in O.S.No. 117 of 2021 on the file of the District Munsif, Dharmapuri.

2. The brief facts of the case are that the suit was filed by the respondent/plaintiff for permanent injunction against the petitioners/defendants from in any manner to interfere with the plaintiff's peaceful possession and enjoyment of the suit property. After several hearings, the suit was posted for filing written statement. At this juncture, the petitioners/defendants have filed the application for appointment of Advocate Commissioner to inspect and note down the physical features of the suit property with the help of the Village Administrative Officer and Taluk Surveyor and to submit a report before the Court below along with sketch. After analyzing the relevant records, the trial Court dismissed the application by order dated 22.08.2022. Aggrieved by the said order, the petitioners/defendants have come



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forward with the present Civil Revision Petition.

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3. According to the respondent/plaintiff, there is no relationship between the petitioners/defendants property and the disputed property in question and there is no proper reasons stated in the affidavit filed by the petitioners/defendants to appoint an Advocate Commissioner. The above application was filed only to drag on the proceedings, to collect the evidence and documents. The suit was filed in the year 2021 for permanent injunction against the defendants. The petitioner has to prove his case at the time of trial by letting evidence and filing documents before the Court below. Hence, there is no need to appoint an Advocate Commissioner to inspect the suit property. Hence, the Court below has rightly dismissed the application, thereby pleaded to dismiss the petition.

4. On a perusal of the records, it is seen that the respondent/plaintiff has filed the suit in O.S.No. 3121 of 2023 on the file of the District Munsif Judge, Dharmapuri. The petitioners/defendants contested the suit by filing written statement denying all the averments made in the plaint. While pending the suit, the petitioners/defendants filed IA.No. 416 of 2022 under Order 26 Rule 9 of CPC., seeking for



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appointment of Advocate Commissioner to note down the physical features of the suit property with the help of the Taluk Surveyor and Village Administrative Officer and submit a report before the Court below.

5. It is pertinent to point out that the defendants have to prove their ownership of the suit property only through their pleadings. It is well settled position of law that a Court Commissioner cannot be appointed to ascertain who is in possession of the suit property and to collect evidence. Since no remedy has been sought for by the petitioners regarding the path mentioned in the petition, this Court is of the view that it is not necessary to appoint an Advocate Commissioner.

6.. In view of the above, the Civil Revision Petition is dismissed.

No costs. Consequently, connected Miscellaneous Petition is closed.

30.08.2023

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



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To

1. The District Munsif, Dharmapuri.
2. The Section Officer, V.R. Section,
High Court, Madras.

V.BHAVANI SUBBAROYAN, J.

MSM

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