



WEB COPY



1

CRP.No. 3321 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No. 3321 of 2023

and

CMP.No. 20582 of 2023

1.Anaigounder

2.Veeramani

...Petitioners

Vs

A. Pavunal

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, prays to set aside the fair and decreetal order dated 24.07.2023 made in IA.No. 3 of 2023 in O.S.No. 134 of 2019 on the file of the District Munsif Court, Bhavani.

For Petitioners : Mr.C.Munusamy

ORDER

This Civil Revision Petition has been filed seeking to to set aside the fair and decreetal order dated 24.07.2023 made in I.A.No. 3 of 2023 in O.S.No. 134 of 2019 on the file of the District Munsif Court, Bhavani.

2. The respondent/plaintiff has filed a suit in O.S.No. 134 of 2019



before the learned District Munsif Court, Bhavani, seeking for permanent injunction against the defendants 1&2, viz., the revision petitioners herein.

The defendants 1&2 have contested the suit by filing a written statement denying all the averments made in the plaint. During the pendency of the suit proceedings, the revision petitioners/defendants have filed an application in I.A.No. 3 of 2023 under Order 26 Rule 9 CPC., seeking to appoint an Advocate Commissioner to inspect and note down the physical features of the suit property and submit a report along with sketch before the Court below. The Court below, after perusing the records, dismissed the application by order dated 24.07.2023. Aggrieved against the said order, the petitioners/defendants have come forward with the present Civil Revision Petition.

3. Heard the learned counsel for the petitioners and perused the materials available on record.

4. On a perusal of the records, it is seen that the above suit was filed by the respondent/plaintiff for permanent injunction against the revision petitioners/defendants from in any manner interfering with the



plaintiff's peaceful possession and enjoyment of the suit property. When the suit was posted for defendants' side evidence, at this juncture, the petitioners/defendants have taken out an Application for appointment of Advocate Commissioner to inspect the suit property on the ground that they are absolute owners of the suit property and in possession of the same. However, the Court below dismissed the Application by stating that the petitioners/defendants have filed the above application only to drag on the proceedings with an intention to collect documentary evidence to prove their possession over the suit property and both the parties have to prove their title only based on oral and documentary evidence.

5. It is well settled position that an Advocate Commissioner cannot be appointed to collect evidence and the parties have to establish their case only by oral and documentary evidence. In the case on hand, the suit has been filed for declaration and permanent injunction. As rightly pointed out by the Trial Court, a Commissioner cannot be appointed to collect evidence and substantiate the right over the property. The petitioner has to prove his case by adducing evidence before the Trial Court. I do not find any error or irregularity in the order passed by the Trial Court. The Civil



4

CRP.No. 3321 of 2023

Revision Petition is devoid of merits and liable to be dismissed.

WEB COPY

6. Accordingly, the Civil Revision Petition is dismissed.

However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

11.09.2023

Index : yes/no

Internet : yes/no

MSM

To

1. The District Munsif Court, Bhavani.

2. The Section Officer

V.R. Section, High Court, Madras.

V.BHAVANI SUBBAROYAN, J.



WEB COPY



5

CRP.No. 3321 of 2023

MSM

C.R.P.No. 3321 of 2023

11.09.2023