



CRP.No. 3378 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2023

CORAM:

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

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and

CMP.No. 21017 of 2023

1.Sivalingam

2.Saraswathi

.. Petitioners

Versus

S. Sundaram

.. Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, prays to set aside the fair and decreetal order dated 09.06.2023 made in I.A.No. 1 of 2022 in O.S.No. 197 of 2020 on the file of Principal Subordinate Judge, Tiruppur.

For Petitioner : Mr. C. Prabakaran

ORDER

This Civil Revision Petition has been filed seeking to set aside the fair and decreetal order dated 09.06.2023 made in I.A.No. 1 of 2022 in



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O.S.No. 197 of 2020 on the file of Principal Subordinate Judge, Tiruppur.

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2. The petitioners/plaintiffs have filed a suit in O.S.No. 197 of 2020 before the learned Principal Subordinate Judge, Tiruppur, seeking for declaration, permanent injunction and other reliefs against the respondent/defendant. The respondent/defendant has 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/plaintiffs have filed an application in I.A.No. 01 of 2022 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 09.06.2023. Aggrieved by the same, the petitioners/plaintiffs have come forward with the present Civil Revision Petition.

3. Heard the learned counsel for the petitioner and perused the records.



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4. On perusal of the records, it is seen that the above suit was filed by the petitioners/plaintiffs for permanent injunction and declaration against respondent/defendant from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property. When the suit was posted for evidence, at this juncture, the petitioners/plaintiffs 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/plaintiffs 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



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

6. Accordingly, the Civil Revision Petition is dismissed.

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

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Speaking order: Yes/No

Neutral Citation : Yes/No

Index : Yes/No

MSM

To

1. The Principal Subordinate Judge, Tiruppur.
2. The Section Officer, V.R. Section,
High Court, Madras.



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