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CRP No. 4460 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.12.2023

CORAM :

THE HON'BLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.4460 of 2023
and
CMP.No.26929 of 2023

Subramaniam

... Petitioner

Versus

- 1.Janarthanan
- 2.Subramania Gounder
- 3.Jawahar
- 4.Gangammal
- 5.N.Balamurugan
- 6.The District Collector
Tiruppur District, Tiruppur.
- 7.The Tahsildar
Udumlalpet Taluk,
Udumalpet.
- 8.Dhandapani

... Respondents

Civil Revision Petition filed Under Article 227 of Constitution of India, praying to set aside the order dated 03.10.2023 made in I.A.No.1 of 2023 in O.S.No.308 of 2017 on the file of the Subordinate Judge, Udumalpet.

For Petitioner : Mr. K.Srinivasan



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ORDER

The petitioner has filed this petition to set aside the order dated 03.10.2023 made in I.A.No.1 of 2023 in O.S.No.308 of 2017 on the file of the Subordinate Judge, Udumalpet.

2. Heard Mr. K.Srinivasan, the learned counsel appearing for the petitioner and perused the materials available on record.

3. Before the trial Court the petitioner has filed an application under Order XXVI Rule 9 of CPC to appoint Advocate Commissioner and the same was dismissed by the learned trial Judge holding that to prove the possession evidence and collection of evidence, the Commissioner cannot be appointed. Aggrieved the same the revision has been preferred by the revision petitioner.

4. To prove the encroachment made by the respondents, the petitioner has filed an application, so far as the trial has not begun and the petitioner / plaintiff is entitled to prove his claim before the trial Court. Since he approached the Court for the relief of declaration in respect of the suit property, if at all, any encroachment can be made and the same can be proved by the Advocate Commissioner's report, and it will minimize the burden of the



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Court.

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5. Therefore, this Court is inclined to set aside the findings rendered by the learned trial Judge in I.A.No.1 of 2023 in O.S.No.308 of 2017. I.A. is allowed and the learned trial Judge is directed to appoint the Advocate Commissioner within a period of two weeks from the date of receipt of a copy of this order and also directed to dispose of the case as early as possible.

6. Accordingly, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

13.12.2023

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

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To

1. The Subordinate Judge, Udumalpet.
2. The Section Officer,
VR-Section, High Court of Madras.

T.V.THAMILSELVI, J.

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