



C.R.P(MD)No.282 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.06.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.282 of 2023

and

C.M.P.(MD)No.1347 of 2023

P.Veluchamy

...Petitioner/Petitioner/Appellant/2nd Defendant

Vs.

1.V.Nataraj Gounder

...1st Respondent/1st Respondent/1st Respondent/Plaintiff

2.Valliammal

...Respondent/2nd Respondent/2nd Respondent/1st Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 14.11.2022 passed by the Additional Sub Court, Palani in I.A.No.20 of 2022 in A.S.No.44 of 2016.

For Petitioner : Mr.T.Lenin Kumar

ORDER

This petition has been filed to set aside the order passed in I.A.No. 20 of 2022 in A.S.No.44 of 2016 dated 14.11.2022, on the file of the Additional Sub Court, Palani.



C.R.P(MD)No.282 of 2023

2.The petitioner herein is the second defendant in O.S.No.55 of 2009 before the District Munsif Court, Palani. The suit was filed by the first respondent herein for a permanent injunction against the petitioner and the second respondent herein, who was arrayed as the first defendant in the suit. The suit was decreed as prayed for by the first respondent herein on 21.01.2015.

3.Aggrieved by the judgment and decree of the District Munsif Court, Palani in O.S.No.55 of 2009 filed by the first respondent herein, the petitioner preferred an appeal before the Additional Sub Court, Palani in A.S.No.44 of 2016. In the said appeal, the petitioner filed I.A.No.20 of 2022 for appointment of an Advocate Commissioner under Order 26 Rule 9 of CPC to inspect the suit schedule property and to verify the boundary and to file report along with the plan.

4.It is the specific case of the petitioner that in the suit schedule property, the petitioner had dug up two bore wells and was utilising the water from the bore well for irrigating his agriculture land. It is the further case of the petitioner that as many as 350 coconut trees were planted and corn were also cultivated by the petitioner which the first



respondent was attempting to destroy. That apart, it is submitted that the boundary dispute between the petitioner and the first respondent herein.

It is submitted that the appellate Court namely, Additional Sub Court, Palani has dismissed I.A.No.20 of 2022 without application of mind. The Additional Sub Court, Palani has dismissed the application with the following observations:

“11. At this juncture the learned counsel for the first respondent argued that Advocate/Commissioner cannot be appointed for collection of evidence and in support of his contention he has brought to the notice of this court the decision of our Hon'ble High Court reported in 2002 (3) CTC 20 and (2009) 1 MLJ 516 wherein it is held that it is not the aim of Order 26 Rule 9 of CPC to assist a litigant to collect evidence where the litigant can get evidence himself and it cannot be entrusted to the Advocate/Commissioner and that when there is no dispute regarding identity of the property commissioner cannot be appointed. As rightly pointed out by the learned counsel here in this case also there is no dispute between the parties regarding the identity and lie and location of the suit property. The dispute is only with regard to the title and possession of the suit property. Further as already stated the trial court has arrived at a finding regarding title and possession of the suit property and passed a judgment and decree on merits. The petitioner has preferred the above appeal only against the judgment and decree passed by the trial court. So at this stage the petitioner is not entitled for appointment of Advocate/Commissioner to note down the physical features and to note down the crops in the properties and to note down the borewell, motor, well and the irrigation with four boundaries in the property.



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C.R.P(MD)No.282 of 2023

Hence this court is of the view the above citations referred by the learned counsel for the 1st respondent is squarely applicable to the facts and circumstances of this case.

12. Further it is seen that the petitioner has not taken any steps for appointment of Advocate/Commissioner before the trial court. He has filed the present petition for appointment of Advocate/Commissioner in this appeal only, that too after a period of five years after filing of the appeal. He has not furnished any reason as to why he has not filed any such petition for appointment of commissioner before the trial court. Hence this court is of the view that the contention of the 1st respondent that this petition is filed only to drag on the proceedings does merit acceptance.

13. Hence considering the above facts and circumstances of this case this Court is of the view that the above petition is devoid of merits and hence the same deserves to be dismissed.

14. In the result this petition is dismissed. No costs."

5.I have considered the arguments advanced by the learned counsel for the petitioner.

6.The case of the petitioner appears to be the land in Survey Nos. 62/1, 62/2, 62/2A and 62/3 originally belonged to the second respondent herein (first defendant in O.S.No.55 of 2009) and that together with three cents of land in Survey No.62/1 was sold by the second respondent to the



C.R.P(MD)/No.282 of 2023

petitioner.

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7.The learned counsel for the petitioner also drawn attention of this Court to the averments in the plaint wherein the first respondent has alleged and admitted that an extent of 3 cents of land in Survey No.62/1 was sold by the second respondent to the petitioner fraudulantly.

8.Thus it emerges that there is no dispute regarding the existence of bore wells. Therefore, the necessity for appointing an Advocate Commissioner to inspect the property and to give a report is not warranted. Therefore, the impugned order rejecting the application filed by the petitioner for appointment of Advocate Commissioner in the appellate stage in the appeal filed by the petitioner in A.S.No.44 of 2016 does not call for any interference.

9.Therefore, this Civil Revision Petition is liable to be dismissed. It is accordingly, dismissed. Considering the fact that the dispute is of the year 2009, the trial Court is directed to dispose of the appeal as expeditious as possible preferably within a period of six months from the



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C.R.P(MD)No.282 of 2023

C.SARAVANAN,J.

Mrn

date of receipt of copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

14.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Mrn

To

- 1.The Additional Sub Judge, Palani.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.R.P(MD)No.282 of 2023

14.06.2023