



C.R.P.(MD).No.400 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 20.02.2023

DELIVERED ON: 22.02.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.400 of 2023

and

CMP(MD).No.1963 of 2023

1.R.Sivaraja

2.Sivalingam

....Petitioners

Vs

1.C.Balu

2.C.Muthukamatchi@ Ramesh

3.C.Kamayee

4.P.Periyapandi

....Respondents

PRAYER: Civil Revision Case is filed under Article 227 of Constitution of India, to set aside the fair and decretal order dated 13.09.2022 in I.A.No.1 of 2022 in A.S.No.7 of 2019 on the file of the Subordinate Court, Theni and allow the civil revision petition.

For Petitioners : Mr.S.Sankar



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ORDER

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The present revision petition has been filed by the appellants in a first appeal who were unsuccessful before the trial Court in a suit for declaration that the sale deed dated 14.02.2011 is null and void and for declaration of title of the first schedule and for permanent injunction. The plaintiffs had further prayed for permanent injunction that the defendants should not disturb the rubber pipe which is being drawn from the first schedule property to the second schedule property.

2. Due to dismissal of the suit, the plaintiffs had filed A.S.No.7 of 2019. Pending first appeal, the plaintiffs had filed I.A.No.1 of 2022 under Order 26 Rule 9 C.P.C for appointment of an Advocate Commissioner to measure the suit schedule property along with a surveyor with the help of revenue records and to file a report and a plan. The said application was dismissed by the trial Court. Challenging the same, the present civil revision petition has been filed.

3. A perusal of the affidavit filed in support of the Advocate Commissioner application reveals that the appellants/plaintiffs have prayed for appointment of Advocate Commissioner for the purpose of establishing that they are in enjoyment of Survey No.521/2A by drawing



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water through dripper pipeline. They further contended that they want to establish their title and possession over the suit schedule properties.

4.The trial Court after considering the submissions on either side had dismissed the application on the ground that the appellants/plaintiffs are attempting to establish their possession by seeking to appoint an Advocate Commissioner. The prayer in the application for appointment of Advocate commissioner clearly reveals that only with an intention, to gather evidence and to establish their possession over the suit schedule property, the present application has been filed. That apart, the said application has been filed in the first appeal which was pending from the year 2019 onwards.

5.Considering the above said facts, this Court does not find any illegality or infirmity in the order passed by the trial Court. This civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.02.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa



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To

1.The Subordinate Court
Theni

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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Pre-delivery order made in
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22.02.2023