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C.R.P(MD).No.855 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.855 of 2023

and

CMP(MD)No.3913 of 2023

A.Antonyselfvam

... Petitioner/Petitioner/Plaintiff

Vs.

1) Arockiaraj

2)Arockiam

3)A.James

... Respondent/Respondents/Defendants

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set-aside the Fair and Decretal order dated 11.11.2022 passed in I.A.No.14 of 2020 in O.S.No.117 of 2019 on the file of the District Munsif Court, Kovilpatti, Thoothukudi District by allowing this Civil Revision Petition.

For petitioner : Mr.S.Velrajan

ORDER

This petition has been filed to set-aside the fair and decretal order dated 11.11.2022 passed in I.A.No.14 of 2020 in O.S.No.117 of 2019 on the file of the District Munsif Court, Kovilpatti, Thoothukudi District.



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2.The petitioner is the plaintiff before the District Munsif Court, Kobilpatti, Thoothukudi District, in O.S.No.117 of 2019. The suit has been filed for declaration and permanent injunction by directing the respondents to remove an encroachment and allow him to put up a staircase in the second schedule suit property. In the said suit, the petitioner filed I.A.No.14 of 2020 for appointment of an Advocate Commissioner. That application has been rejected by the Trial Court by the fair and decreetal order dated 11.11.2022.

3.The question of appointment of an Advocate Commissioner would arise only when the Court has doubts regarding physical feature and boundary of the property. In this case, admittedly, there is an alleged encroachment by the respondents/defendants by putting up a construction in the second schedule suit property. Therefore, the petitioner has to establish the same, during the trial. It is not open for the petitioner to ask the Court to appoint an Advocate Commissioner to give a report which would tantamount to collecting evidence. In my view, there is no ground to interfere with the impugned order passed by the Trial Court. Therefore, this Civil Revision Petition filed by the petitioner deserves to be dismissed.



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4.The Trial Court however directed to expedite the trial in O.S.No.117 of 2019 preferably within a period of 6 months from the date of receipt of a copy of this order.

5.With the above direction, this Civil Revision Petition is dismissed.
No costs. Consequently, the connected miscellaneous petition is closed.

29.03.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
dss

To

The District Munsif Court, Kovilpatti, Thoothukudi District.



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C.SARAVANAN,J.

dss

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