



C.R.P.(MD).No.877 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 22.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.877 of 2019

and

C.M.P(MD)No.5117 of 2019

R.Naina Mohamed

... Revision Petitioner/Petitioner/
Plaintiff

-vs-

Ahamed Jalal

... Revision Respondent/Respondent/
Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Civil Procedure Code, to revise and set aside the Fair and Executable Order passed in I.A.No.804 of 2018 in O.S.No.154 of 2014, dated 04.03.2019 on the file of the District Munsif Court, Ramanathapuram, Ramanathapuram District.

For Petitioner : Mr.S.A.Ajmal Khan

For Respondent : Mr.D.Balamurugapandi

ORDER

The present Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India, against the Fair and Executable Order passed in I.A.No.804 of 2018 in O.S.No.154 of 2014, dated 04.03.2019



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on the file of the District Munsif Court, Ramanathapuram, Ramanathapuram District.

2. The petitioner herein is the plaintiff and the respondent herein is the defendant before the Court below and they are the brothers.

3. The learned counsel for the petitioner would submit that the suit property was originally belonged to their father. He would further submit that his father has executed a registered Will dated 20.07.1992, and that subsequent to the demise of their father, the Will came into effect, and the petitioner is occupying the ground floor portion, and the first floor portion has been occupied by the respondent herein.

4. It is also submitted by the learned counsel for the petitioner that in order to prove the separate possession of the property by the petitioner and the respondent, the existing physical features to be to the Court. Hence, the petitioner has moved an application for appointment of Advocate Commissioner. The said application was resisted by the respondent, on the ground that under the guise of appointing Advocate Commissioner, the evidence could not be collected and possession could not be proved.



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5. After hearing the either side, the Court below dismissed the said application with the finding that the commissioner application has been filed only to collect the evidence and prove the possession. Aggrieved with the said order, the petitioner is before this Court.

6. The learned counsel for the petitioner reiterated the contention made in the plaint and would submit that unless the Commissioner is being appointed, the very intention of their father that the suit property was separately allotted to the petitioner as well as the respondent would not be proved. However, the respondent could object the said contention and would further submit that the petitioner filed the application for appointment of Advocate Commissioner only to prove the possession of the property.

7. This Court has given anxious consideration to the submissions of the learned counsel on either side.

8. The sum and substance for seeking appointment of Commissioner is to prove the separate enjoyment of the property between the plaintiff and the defendant. This could be seen in a different perspective. Though it has been



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stated that only to prove the separate enjoyment between the parties, Commissioner is to be appointed, it impliedly denotes the intention of the petitioner to prove the possession. It is well settled proposition of law that to prove the possession, Commissioner could not be appointed. Even on the perusal of the order of the Court below, the Court below has considered all these aspects and rejected the application. Hence, this Court could not find any infirmity in the order of the Court below. Thus it does not require any interference by this Court.

9. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
The District Munsif Court,
Ramanathapuram, Ramanathapuram District



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C.KUMARAPPAN,J.

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