



CRP(MD).No.1457 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2023

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.1457 of 2019

and

C.M.P.(MD)No.7739 of 2019

1.N.S.Ahamed

2.N.S.Mohamed Ismail

: Petitioner

Vs.

1.Ameerudeen @ Johny

2.Kamarunisha

3.N.S.Mohamed Yusuf

: Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 01.09.2018 passed in I.A.No.96 of 2018 in O.S.No.778 of 2012 on the file of the III Additional District Munsif Court, Trichy District and allow the present Civil Revision Petition.

For Petitioner : Mr.R.J.Karthick

For Respondents 1&2 : Mr.R.Sundar

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 01.09.2018 passed in I.A.No.96 of 2018 in



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O.S.No.778 of 2012 on the file of the III Additional District Munsif Court, Trichy District.

2.The petitioners are the plaintiffs and the respondents are the defendants. For the sake of convenience, the parties will be referred to according to their status before the Court below.

3.It appears that the plaintiffs have filed a suit for the relief of bare injunction in respect of the 'B' Schedule property and also for a declaration in respect of settlement deed. The said suit was refuted by the defendants. The plaintiffs have also moved an application for appointment of an Advocate Commissioner, on the ground that, if an Advocate Commissioner is appointed, then he could elucidate all the physical features before the Court of law and much of oral evidence would be avoided. The Court below, after considering either side submissions has ultimately dismissed the application stating that the very application has been filed for collection of evidence. Aggrieved by the same, the present petition has been filed.

4.Learned Counsel for the plaintiffs would submit that the very application has been filed since the plaintiffs have disputed the very existence of the physical features of the 'B' schedule property. Therefore, if an Advocate Commissioner is appointed, then the



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existence of 'B' schedule property would be shown and it would reduce much of oral evidences.

5.However, learned Counsel for the defendants would submit with great agility that in a suit for bare injunction, seeking for appointment of an Advocate Commissioner is nothing but collection of evidences. He would further submit that the plaintiffs have not even filed any materials to prove the existence of the 'B' schedule property.

6.I have given my anxious consideration to the submissions of the learned counsel appearing on either side, and perused the materials available on record.

7.The very argument that when the defendants dispute the very existence of the 'B' Schedule property, then there is duty cast upon the plaintiffs to prove the same, has got some rationale.

8.Therefore, this Court is of the view that the appointment of an Advocate Commissioner would be very much useful in deciding the ultimate issue. Therefore, this Court deems it appropriate to interfere with the order passed by the Court below.



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9.In the result, this Civil Revision Petition is allowed and the order passed in I.A.No.96 of 2018 in O.S.No.778 of 2012 dated 01.09.2018 is set aside and the matter is remitted back to the Court below, directing the Court below to appoint an Advocate Commissioner to note down the physical features in respect of the petition mentioned property. Considering the pendency of the suit since 2012, this Court deems it appropriate to give a direction to the Court below to dispose of this matter as expeditiously as possible preferably within a period of six [6] months. No costs. Consequently, the connected miscellaneous petition is closed.

12.09.2023

Index : Yes / No

Internet : Yes / No

MR



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To
The III Additional District Munsif Court,
Trichy District.



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C.KUMARAPPAN, J.,

MR

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