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C.R.P(MD)No.541 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.07.2023**

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.541 of 2018

and

C.M.P(MD)No.2352 of 2018

Sundar

...Petitioner/Petitioner/
Plaintiff

Vs.

1.Rajendran

2.Rymond

3.Mary

...Respondents 1 to 3/
Respondents 1 to 3/
Defendants 1 to 3

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed by the learned Subordinate Judge, Kuzhithurai, dated 18.03.2017 in I.A.No.5 of 2017 in O.S.No.2 of 2017.

For Petitioner : Mr.N.Dilip Kumar

For R1 : Mr.C.Godwin

For R2 & R3 : No Appearance



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ORDER

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The present civil revision petition has been filed against the order passed by the learned Subordinate Judge, Kuzhithurai in I.A.No.5 of 2017 in O.S.No.2 of 2017, dated 18.03.2017.

2. The petitioner is the plaintiff before the trial Court. The plaintiff has filed a suit for the relief of declaration to declare his possessory right and also declare that the sale deed, dated 28.09.2000 as null and void and the decree in O.S.No.210 of 2016 is to be set aside. It appears that in the suit, the plaintiff has filed an application for appointment of Commissioner. Wherein, though the petitioner has referred so many things in Paragraph No.7, he wanted an appointment of Commissioner to ascertain the present status of the plaint schedule property building.

3. The said application was objected by the respondents on the ground that there is no dispute regarding the identity of the property, and also contended that the appeal filed against O.S.No.210 of 2016 has already been disposed of, and E.P. is pending, and only to obstruct the E.P. proceedings, the petitioner has come forward with this application.



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4. The learned Trial Judge after elaborately discussing the factual aspects has ultimately rejected the application.

5. Aggrieved with the order, the petitioner/plaintiff has come up this application.

6. The learned counsel for the petitioner submit that the very dismissal of the Commission application is contrary to the factual position and he urged before this Court that the filing of the Commission application was necessitated only due to the issue in respect of the identity of the property. However, the learned counsel would fairly conceded that in the affidavit no such pleading was referred to.

7. Therefore, this Court is of the view that, if the petitioner had any issue regarding the identity of the property, he would have referred the reasons in the affidavit. Since there is no such pleading in the affidavit, this Court is not impressed with the arguments of the learned counsel for the petitioner. However, the order of the learned Trial Judge has considered all aspects and arrived at a just conclusion that there is no dispute in respect of the identity of the property. Therefore, the



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appointment of Commissioner will not arise. This Court do not find any manifest error in the well considered order.

8. In the result, this civil revision petition stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

27.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The learned Subordinate Judge,
Kuzhithurai.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

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