



C.R.P.(MD)No.2638 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.10.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2638 of 2023

and

C.M.P.(MD)No.13758 of 2023

Navaneethakrishnan

... Petitioner/
Petitioner/
Appellant

Vs.

Deva Industries
represented by its Proprietor Gopal

... Respondent/
Respondent/
Respondent

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 18.02.2023 in I.A.No.2 of 2020 in A.S.No.141 of 2019 on the file of the learned II Additional Subordinate Court, Tiruchirappalli.

For Petitioner : Mr.J.Madhu

ORDER

The Civil Revision is directed against the order passed in I.A.No.02 of 2020 in A.S.No.141 of 2019 dated 18.02.2023 on the file of the II



C.R.P.(MD)No.2638 of 2023

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Additional Subordinate Court, Tiruchirappalli, dismissing the commission petition.

2. The petitioner, who is the adjacent land owner, has filed a suit for recovery of possession and mesne profits against the respondent in O.S.No.1376 of 2015, that the respondent has filed a suit for bare injunction in O.S.No.1375 of 2015, that after joint trial, the III Additional District Munsif, Tiruchirappalli dismissed the petitioner's suit and allowed the respondent's suit and that the petitioner has then preferred two appeals in A.S.Nos.141 and 142 of 2019 and the same are pending on the file of the II Additional Subordinate Court, Tiruchirappalli. Pending appeals, the petitioner has filed the above application for appointment of Advocate Commissioner alleging that the respondent has contested the suit, as if, the property was belonging to him, but the property is not belonging to the respondent and that therefore, in order to clear out the same, Advocate Commissioner has to be appointed.

3. The learned counsel appearing for the revision petitioner would submit that the respondent is in the possession of the Government



C.R.P.(MD)No.2638 of 2023

WEB COPY

Porambokku Land, but actually he is in possession of part of the suit property belonging to the revision petitioner.

4. It is evident from the records that when the suits were pending before the trial Court, the petitioner has filed the application for appointment of Advocate Commissioner in I.A.No.69 of 2018 and the same was ordered to be dismissed and that the petitioner has preferred a revision before this Court in C.R.P.(MD)No.2565 of 2017 and the same was also dismissed on 19.06.2018.

5. The petitioner in the appeal has been again attempting for appointment of Advocate Commissioner.

6. It is settled law that Advocate Commissioner cannot be appointed to find out the factum, as to who is in the possession of the property or to ascertain the ownership of the property. It is for the revision petitioner to prove the same through the necessary evidence. Hence, the impugned order dismissing the commission petition cannot be found fault with.



C.R.P.(MD)No.2638 of 2023

WEB COPY

7. In the result, this Civil Revision Petition is dismissed. However, since the appeal is pending from 2019 onwards, the Appellate Court is hereby directed to hear the appeal in A.S.No.141 of 2019 and dispose of the same within a period of four months from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

13.10.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The II Additional Subordinate Court,
Tiruchirappalli.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(MD)No.2638 of 2023



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K.MURALI SHANKAR,J.

csn

Order made in
C.R.P.(MD)No.2638 of 2023
and
C.M.P.(MD)No.13758 of 2023

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