



C.R.P.(MD)No.1879 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.R.P.(MD)No.1879 of 2022

V.Rajamani : Petitioner

Vs.

V.Nadarajan : Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.2 of 2021 in A.S.No.25 of 2019 on 07.06.2021 by the Subordinate Court, Manamadurai.

For Petitioner : Mrs.Lakshmi Gopinath for
M/s Polax Legal Solutions

For Respondent : Mr.S.Srinivasa Raghavan



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ORDER

This Civil Revision Petition is directed against the order passed by the learned Subordinate Judge, Manamadurai in I.A.No.2 of 2021 in A.S.No.25 of 2019 dated 07.06.2021, dismissing the petition filed by the petitioner for appointment of Advocate Commissioner.

2. The petitioner had filed a suit in O.S.No.55 of 2013 on the file of the District Munsif-cum-Judicial Magistrate, Ilayankudi, praying for declaration of title over the suit property. The Trial Court dismissed the suit stating that the petitioner had not properly described the suit property and had not spelt out as to how the suit property was allotted to him in the partition. Further, the Trial Court held that the boundaries mentioned in the document relied upon by the petitioner varied from the boundaries mentioned in the suit schedule.

3. The petitioner had challenged the said Judgment before the Sub-Court, Manamadurai. In the appeal, he had filed the petition in I.A.No.2 of



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2021 for appointment of Advocate Commissioner stating that since the Trial Court had dismissed the suit, as the petitioner had not established his claim for declaration on the basis of the documents, he has to examine a Commission to show the nature and extent of the suit property and its boundaries.

4. The respondent herein resisted the said petition stating that the dispute is as regards the interpretation of the documents and as to how the petitioner claims title over the suit property. Since there is no dispute with regard to lie and location of the suit property or with regard to its identity, the appointment of the Advocate Commissioner will not help the case of the petitioner in any manner; and the said petition has been filed only to delay the disposal of the first appeal.

5. The Court had considered the rival contentions and held that the appointment of Commissioner would not be of any assistance to decide the issue in hand. The Court further observed that the petitioner had not pleaded as to which portion of the suit property was allotted to him as per



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the partition deed Ex.A1. The Court further held that the Commissioner cannot be appointed in the facts and circumstances of the case.

6. Heard the learned counsel appearing on either side and perused the impugned order.

7. This Court finds that the suit filed by the petitioner was dismissed on the ground that there was a discrepancy in the suit schedule property; that he had not stated as to which property was allotted to him under the partition; and that in the documents relied on by the plaintiff, the boundaries are different from the boundaries mentioned in the suit schedule and the documents relied upon by the respondent. The Trial Court further found that the petitioner had not shown as to how the extent of 4 cents was allotted to him. From a perusal of the records, it is clear that the issue between the petitioner and the respondent is with regard to whether there was a partition and it was acted upon. There is no dispute with regard to the boundaries and extent. The petitioner has to succeed or fail on the basis of available documents. The appointment of Advocate Commissioner is a



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redundant exercise in the facts of the case. The petitioner has to establish his case on the basis of the existing documents and show as to how the finding of the Trial Court may not be correct. It is only the interpretation of the documents and the evidence that is involved in this case. Hence, the order passed by the learned Subordinate Judge, Manamadurai, is justified in law and this Court sees no reason to interfere with the said impugned order.

8. In the result, this Civil Revision Petition is dismissed. No costs.

02.03.2023

Index : Yes/No
Internet : Yes
skn

To
The Subordinate Judge,
Manamadurai.



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SUNDER MOHAN, J.

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