



CRP(PD)(MD).No.5 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 25.07.2023

DELIVERVED ON : 29.09.2023

CORAM

THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI

C.R.P(PD)(MD)No.5 of 2020 and
CMP(MD).No.6 of 2020

Nagammal

: Revision Petitioner / plaintiff

Vs.

1.Ponnambalam

2.The District Collector,
District Collectorate,
Trichirappalli District.

3.Revenue Divisional Officer,
Revenue Divisional Office,
Trichirappalli District.

4.The Tahsildar,
Tahsildar's Office,
Manapparai
Trichirappalli District.

Respondents / defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decreetal order, dated



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01.08.2019 made in I.A.No.3 of 2019 in O.S.No.63 of 2008 on the file of the Additional District Munsif, Manapparai.

For Petitioner : Mr.C. Gobinath
Fro respondents : Mr.B. Prahalad Ravi – R1
Mr.G. Suriyanath – R2 to R4

ORDER

The above Civil Revision Petition is preferred against the order, dated 01.08.2019 made in I.A.No.3 of 2019 in O.S.No.63 of 2008 on the file of the Additional District Munsif, Manapparai.

2. According to the revision petitioner, the revision petitioner herein is the plaintiff in the suit property in O.S.No.63 of 2008, on the file of the the Additional District Munsif, Manapparai and she has filed the said suit for the relief of permanent injunction. During the pendency of the suit, the petitioner / plaintiff has filed an application in I.A.No.3 of 2019 for appointment of an Advocate Commissioner to measure the suit property with the assistance of the qualified Surveyor and file his report. The said application was dismissed by the trial Court. Against which, the



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present revision is preferred.

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3. The learned counsel appearing for the revision petitioner / plaintiff would submit that the defendants have denied the existing physical features in the suit property and therefore, it has become necessary to appoint an Advocate Commissioner to note down the existing physical features. However, the same is dismissed by the trial Court and hence, the petitioner / plaintiff has filed the present Civil Revision Petition.

4. The learned counsel for the respondents would submit that already a suit in O.S.No.71 of 2008 filed by the respondents / defendants against the petitioner / plaintiff, in which, the Commissioner was appointed who has filed his report stating that the petitioner herein has encroached the petition mentioned property and the suit was decided in favour of the respondents / defendants and therefore, there is no necessity for appointment of an Advocate Commissioner in this regard and prayed for dismissal of this petition.

5. Heard the learned counsel appearing on either side and perused the materials available on record.



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6. The revision petitioner / plaintiff has submitted that in the 2nd item of the suit property, the petitioner / plaintiff was in enjoyment for more than the prescribed period by using the same as bathroom and as cattle shed and as place to store the fire woods. The above said facts cannot be established by evidence either by oral or documentary evidence. Therefore, the appointment of Advocate Commissioner to elucidate the physical features of the suit property is necessary.

7. The same is resisted by the respondents / defendants in counter stating that already in the suit in O.S.No.71 of 2008, Advocate Commissioner was appointed and in the report it has been mentioned that the petitioner / plaintiff has encroached in the petition mentioned property and the suit was decided in favour of the respondents / defendants. Hence, the trial Court has rightly dismissed the application which calls for no interference.

8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. From the averments made in the petition it is made clear that the



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petitioner's endeavour is to prove her possession in the disputed property.

In order to prove the possession, Advocate Commissioner cannot be appointed. It has to be proved by evidence. Therefore, the investigation by the local Commissioner is not permissible. In the Judgment reported in **2008(1)ALD 461** in the case of **Parepally Satyanarayana Vs. Vutukuri Meender Goud and Ors** it is held that the Commissioner cannot be appointed to find out as to who is in occupation of the property. Therefore, the trial Court has rightly held that the Advocate Commissioner cannot be appointed to find out the factum of possession and for collection of evidence. Hence, this Court does not find any infirmity in the order passed by the Court below.

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

29.09.2023

Index : Yes / No
Internet : Yes/ No
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To

The Additional District Munsif, Manapparai.



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K. GOVINDARAJAN THILAKAVADI, J.,

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