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CRP No.287 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.287 of 2024 and
CMP No.1337 of 2024

P.Lalitha Premnath

... Petitioner

Vs.

Kamatchi

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order, dated 10.08.2023 in I.A.No.3/2021 in O.S.No.416/2020 passed by the IV Additional District Munsif, Salem.

For Petitioner

: Ms.N.S.Amogh Simha

ORDER

This Civil Revision Petition has been filed to set aside the order dated 10.08.2023 passed in I.A.No.3/2021 in O.S.No.416/2020 by the IV Additional District Munsif, Salem.

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2. The brief facts leading to the filing of Civil Revision petition is as follows:

The petitioner herein is the plaintiff in O.S.No.416/2020 and she has filed the above suit against the respondent/defendant for mandatory injunction directing him to produce legal heir certificate of deceased Ravisankaran and also permanent injunction restraining him from disturbing her peaceful possession and enjoyment of the suit property. Pending suit, she filed an application in I.A.No.3/2021 to appoint an advocate commissioner to list out the articles in the schedule house and to hand over them into the court, with the help of government official. The above application was dismissed by the trial Court on the ground that advocate commissioner cannot be appointed to gather evidence for the parties and the onus is on the parties to lead adequate oral and documentary evidence to prove their respective cases. Challenging the above order, the instant civil revision petition has been filed.



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3. Heard the learned counsel for the petitioner and I have perused the materials on record.

4. It is an admitted fact that the petitioner has filed the suit for mandatory injunction to produce the legal heirship certificate of the deceased Ravisankaran, who was the tenant under the petitioner. It is contended by the respondent, as per the counter affidavit that, the said Ravisankaran and his wife Arunadevi died on 19.09.2020 and 24.09.2020 respectively and they had no issues; the respondent is wife of Balaji, who is the brother of Arunadevi; the respondent is taking steps to get legal heirship certificate of the deceased persons; and she is in possession and enjoyment of the suit property.

5. It is argued by the learned counsel for the petitioner that the respondent is in illegal occupation of the schedule property, and when the factum of actual legal heirs of the deceased persons is not yet proved, the application filed by the petitioner with limited scope of prayer, ought to



have been allowed by the Trial Court.

6. The object of local investigation under Rule 9 is to obtain evidence which from its peculiar nature can best be had from the spot itself. Such evidence enables the Court to properly and correctly understand and assess the evidence on record. The Court would not appoint a Commissioner for taking measurement of the suit premises in mechanical manner, without considering the need for appointment of Commissioner. The local investigation presupposes the existence on the record of independent evidence, which requires to be elucidated. The Provisions of Order XXVI cannot be invoked for the purpose of collecting evidence to be adduced in the case and the Court shall not appoint a Commissioner merely because a party ask for it.

7. Here in this case, the suit has been filed for mandatory injunction and permanent injunction as stated supra. In such circumstances, the prayer for appointing Advocate Commissioner to take an inventory of the suit



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property is unwarranted, to decide the issues involved in the suit. Hence, the Trial Court has rightly declined to appoint advocate commissioner and dismissed the application and I find no reason to interfere with the impugned order passed by the Trial Court. As such, the civil revision petition is liable to be dismissed as it has no merits.

8. In fine, the civil revision petition is dismissed and the impugned order passed by the Trial Court is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

29.01.2024

Index: Yes/No
Internet: Yes/No
mst

To

The IV Additional District Munsif, Salem.



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V.SIVAGNANAM, J.,

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