



Crp No.279 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 23.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRP No.279 of 2024 and
CMP No.1302 of 2024

1. P.Pichamuthu
2 . P.Manimuthu
3 . P.Prabhu

... Petitioners

Vs.

Chakaravarthy

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order dated 05.10.2023 in I.A.No.749/2022 in O.S.No.106/2020 on file of the District Munsif Court, Sankarapuram.

For Petitioners : Ms.R.Divyapreathika

for Mr.R.Bharath Kumar

ORDER

This Civil Revision Petition has been filed to set aside the order dated 05.10.2023 in I.A.No.749/2022 in O.S.No.106/2020 on file of the District



Crp No.279 of 2024

Munsif Court, Sankarapuram.

WEB COPY

2. The petitioners herein are the defendants and the respondent herein is the plaintiff in the above said suit in O.S.No.106/2020, which was filed for declaration, declaring that the plaintiff has title over the suit schedule properties and for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit properties. In the above said suit, the respondent/plaintiff has filed an application in I.A.No.749/2022 to appoint an Advocate commissioner to inspect the suit property and to measure the same along with surveyor and to file a report with plan. The above petition was allowed and challenging the same, the present civil revision petition has been filed.

3. The learned counsel for the petitioners submitted that, no advocate commissioner can be appointed for collecting evidence and it is the duty of the plaintiff to prove his case, by letting oral and documentary evidence. He further submitted that, when the plaintiff has filed a suit for declaration of title along with the prayer of permanent injunction, the question as to who is in possession of the property is a matter to be decided by the court on the basis of the evidence, either oral or documentary to be adduced by the parties and the above function cannot be delegated to commissioner, who cannot find out as to who is in possession of the property. Hence, the impugned



Crp No.279 of 2024

order is liable to be dismissed.

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

5. On perusal of the records, it reveals that, the respondent/plaintiff has filed the above said suit for declaration and permanent injunction with regard to the suit property, which is a pathway. The title and right over the pathway by the plaintiff is disputed by the defendants. According to the respondent/plaintiff, he purchased the above said pathway from the father of the first defendant. Per contra, it is the contention of the petitioners/defendants that there is no such pathway existed in the suit property. Therefore, to find out, whether a pathway is in existence in the suit property or not, appointment of advocate commissioner is essential and hence the Trial Court has rightly appointed the Advocate Commissioner. I find no infirmity in the impugned order to interfere over the same and hence the civil revision petition is liable to be dismissed as it has no merits.

6. Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

23.02.2024

Index:Yes/No
Internet:Yes/No
mst



Crp No.279 of 2024

To
WEB COPY The District Munsif, Sankarapuram.



WEB COPY



Crp No.279 of 2024

V.SIVAGNANAM, J.

mst

CRP No.279 of 2024

23.02.2024