



C.R.P.No.294 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.294 of 2023
and C.M.P.No.2430 of 2023

1.Saraswathi
2.Nandhagopal
3.Mohanraj
4.Thilagamani

... Petitioners

-Vs-

Chinnammal

... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and final order dated 29.09.2022 made in I.A.No.1 of 2022 in O.S.No.24 of 2021 on the file of the learned Subordinate Court, Palladam.

For Petitioners : Mr.N.S.Suganthan

For Respondent : Mr.B.Thirumalai
for Mr.S.Nagarajan

ORDER

This Civil Revision Petition arises at the instance of the defendants. For the sake of convenience, the parties will be referred to as per their ranking in the suit.

2. O.S.No.24 of 2021 has been presented by the plaintiff seeking for the relief of declaration that she is the absolute owner of the suit property and for a permanent injunction restraining the defendants, their men, agents and



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subordinates from interfering with the peaceful possession and enjoyment of the plaintiff with respect to the suit schedule mentioned property.

3. On service of summons, the defendants entered appearance through counsel and have filed a detailed written statement. Thereafter, issues have been framed and the matter was listed for trial. At that stage, the defendants who are four in number, took out an application in I.A.No.1 of 2022 seeking for appointment of an advocate commissioner for local inspection of the suit schedule mentioned property and the properties in and around the petition mentioned properties and to file a report. The plaintiff filed a counter to this application stating that the defendants are not entitled to take this plea as there is no dispute in the title of the properties. She would also plead that the plan and report if filed by the advocate commissioner will not be relevant nor would help the Court to come to the conclusion with respect to the matter in issue viz., whether the plaintiff is the owner of the property and whether she is entitled for the declaratory relief. The learned trial Judge, on considering the arguments of the respective parties, came to a conclusion that there is no necessity for appointment of an advocate commissioner and dismissed the application in and by way of his order dated 29.09.2022. Aggrieved by the same the present revision has been filed.

4. Heard Mr.N.S.Suganthan learned counsel for the petitioners and Mr.B.Thirumalai on behalf of Mr.S.Nagarajan for the respondent.



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5. In a suit for declaration of title and for injunction, where the burden of proof is on the plaintiff to prove with cogent evidence that he is the owner of the property. There is no necessity for the defendant to take upon himself the burden of taking out an application for appointment of an advocate commissioner. A close reading of the plaint and written statement would reveal that there is no dispute with respect to the identity of the property. The plaintiff has conceded that the defendants have their property on the eastern and southern side of the suit schedule mentioned property and also that there is a well in S.F.No.322, which is adjacent to the suit schedule mentioned property. Furthermore, a perusal of the written statement would show that the specific case of the defendants is the suit land is an elongated portion of the west and north side of the plaintiff's ancestral property and they would rely upon the FMB sketch in order to substantiate the same. In case there is a dispute in identity, extent etc., of the suit property, it makes sense to appoint a court commissioner and obtain a report from him. A reading of the plaint and written statement would show that there is no such dispute.

6. Therefore, I do not find any reason to take a different view from the learned trial Judge that appointment of an advocate commissioner in this case would be nothing but an exercise, on behalf of the defendants, to fish out evidence in order to substantiate their case. Under Order XXVI Rule 9 of the Code of Civil



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Procedure, an advocate commissioner has to be appointed in order to elucidate the matter in issue. The matter in issue in the present case is the title of the plaintiff. For the said purpose, an advocate commissioner cannot be appointed. As stated above, it is the duty of the plaintiff to substantiate his case through oral and documentary evidence on that issue.

7. In fine, the Civil Revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

12.06.2024

Index : Yes/No

Neutral Citation : Yes/No

KST

To

The Subordinate Judge
Palladam.



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V. LAKSHMINARAYANAN, J.

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