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CRP No.359 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.359 of 2024 and
CMP No.1687 of 2024

K.T.Senthilkumar

... Petitioner

Vs.

P.S.R.Rajarathinam

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order, dated 06.11.2023 passed in I.A.3/2023 in I.A.No.3427 of 2015 in O.S.No.1536/2015 by the Additional District Munsif-I, Coimbatore.

For Petitioner

: Mr.S.Saravanakumar

ORDER

This Civil Revision Petition has been filed to set aside the order and decreetal order, dated 06.11.2023 passed in I.A.3/2023 in I.A.No.3427 of



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2015 in O.S.No.1536/2015 by the learned Additional District Munsif-I, Coimbatore.

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.1536/2015 and he filed the above suit against the respondent herein/defendant for permanent injunction restraining him from disturbing the peaceful possession and enjoyment of the plaintiff in the suit property. Pending suit, the respondent/defendant has filed I.A.No.3427/2015 for appointment of Advocate Commissioner to measure the suit property with the help of Taluk surveyor and to note down the physical features of the property. The above petition was allowed by the Trial Court and one C.A.Ravikumar was appointed as Advocate Commissioner and after executing the warrant, he has also filed a report along with the sketch. For the above report, the petitioner has also filed his objections. Subsequently, the petitioner/ plaintiff has filed I.A.No.3/2023 to reject the report filed by the Advocate Commissioner and



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also to appoint a new Advocate Commissioner to measure the property, as per the survey records. The above petition was dismissed by the Trial Court and hence the present civil revision petition has been filed.

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

4. Admittedly, the petitioner/plaintiff has filed the suit for permanent injunction, not to disturb his peaceful possession and enjoyment of the suit property and in that suit, on petition filed by the respondent, already Advocate Commissioner was appointed and he had filed a report along with sketch. To the commissioner's report, the petitioner has filed his objection. However, he filed application seeking appointment of a new Advocate Commissioner, because the then Advocate Commissioner has not followed the guidelines for survey and he has not surveyed both the properties of the petitioner as well as the respondent, as per the survey records. The learned Trial Judge has dismissed the above application by holding that already the



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advocate commissioner has visited the suit property and measured the property by following due process of law and he had filed a report along with plan. Therefore, for the same reason, another advocate commissioner cannot be appointed.

5. 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.



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6. Here in this case, already a commissioner was appointed and his report is available on record. The petitioner has also filed his objection for the said report. In such circumstances, the petitioner has to prove his case by adducing independent evidence. Hence, the Trial Court has rightly declined to appoint another 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.

7. 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.

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Index: Yes/No
Internet: Yes/No
mst

To

The Additional District Munsif-I, Coimbatore.

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