



C.R.P.No.774 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2024

CORAM

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.R.P.No.774 of 2023
and C.M.P.Nos.5965 of 2023

M.Rajendran

...Petitioner

vs.

1.R.Arun Raj

2. R.Raguraman

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.200 of 2022 in O.S.No.141 of 2022 dated 19.01.2023 on the file of IInd Additional District Court, Chidambaram, and dismiss the said I.A. by allowing this Civil Revision Petition.

For Petitioner : Mr.A.Muthukumar

For Respondents : No Appearance

ORDER

This Civil Revision Petition is filed by the second defendant.
Aggrieved by the order passed in I.A.No.200 of 2022 under Order XXVI



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Rule 9 of Civil Procedure Code, 1908 read with Section 151 of C.P.C, the said application was filed for appointment of an Advocate Commissioner to inspect the suit properties, to note down the physical features of the suit properties and to file a detailed report along with plan (I.A.No.200 of 2022 dated 19.01.2023 on the file of the II-Additional District Judge, Chidambaram).

2. Despite the service of notice to the respondents, neither the respondents have appeared nor entered appearance through their Counsel.

3. The suit O.S.No.141 of 2022 on the file of the Principal District Court, Cuddalore was filed by the present revision petitioner's son R.Arun Raj against his elder brother R.Raguraman/first defendant and his father M.Rajendran/2nd defendant, who is the revision petitioner herein for the relieves of partition, separate possession, and for rendition of accounts of future income from the suit properties. Meanwhile, the above said application was filed by the plaintiff under Order XXVI Rule 9 of CPC and it was allowed.



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4. Mr.A.Muthukumar, learned counsel appearing for the revision petitioner would strenuously contend that in the suit for partition, the Advocate Commissioner can be appointed only at the final decree proceedings for effecting partition, and it is totally not necessary pending trial. To substantiate his arguments, 2009 (5) CTC 706 (*Elango Vs. Kasthuri*) was referred to. In a suit for permanent injunction, an Advocate Commissioner was appointed at the instance of the plaintiff, to virtually noting down the factum of possession under the pretext of noting down the physical features.

5. This suit was filed for the relief of partition. In order to understand the Order XXVI Rule 9 of CPC, the said provision is extracted hereunder:

“In any suit, if the Court feels that local investigation to be necessary for the purpose of elucidating any matter in issue or for ascertaining market value of any property or in order to ascertain the amount of any mesne profits or damages, or annual net profits, the Court may issue permission to such person as it thinks fit.”

6. The crucial question is, in a suit for partition, whether local



inspection of the suit property in order to find out the physical features of the suit property is necessary or not. Considering the nature of the suit and relieves sought for, appointment of the Advocate Commissioner for the purpose of inspecting the suit properties to find out physical features of the suit properties is totally unwarranted.

7. In the given circumstances, the factum of possession under the pretext of noting down the physical features cannot be permitted to be taken place.

8. It is well established principles of law that the Advocate Commissioner cannot be appointed in the matters of proving the possession or to collect evidence in a suit for partition. The application under Order XXVI Rule 9 was filed and allowed, and by impugned order, the trial Court has appointed the Advocate Commissioner to note down the physical features of the suit properties (suit properties are land and house properties). For the said reasons, the order of the trial Court is liable to be interfered with.

9. Accordingly, this Civil Revision Petition stands allowed and the order passed by the learned trial judge in I.A.No.200 of 2022 in



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O.S.No.141 of 2022 stands set aside. There is no order as to costs.

Consequently, connected miscellaneous petition stands closed.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

The II - Additional District Court, Chidambaram,



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R.KALAIMATHI, J.
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