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C.R.P.No.961 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2024

CORAM

THE HONOURABLE THIRU JUSTICE **A.D.JAGADISH CHANDIRA**

C.R.P.No.961 of 2023
and CMP No.7127 of 2023

J.Senthil

.... Petitioner

VS

S.Nanjappan

..... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decreetal order passed by the Principal District Munsif, Thiruchengode dated 20.11.2021 passed in I.A.No.3 of 2020 in O.S.No.73 of 2020.

For Petitioner : Mr.A.M.Amutha Ganesh

For Respondent : Mr.R.Marudhachalamurthy

ORDER

The Civil Revision Petition has been filed against the order passed by the Principal District Munsif, Thiruchengode dated 20.11.2021 passed in I.A.No.3 of 2020 in O.S.No.73 of 2020, dismissing the petition filed under Order 26 Rule 9



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r/w Section 151 of Civil Procedure Code seeking for appointment of an Advocate Commissioner.

2. The petitioner is the plaintiff in O.S.No.73 of 2020, seeking for permanent injunction restraining the defendant from trespassing into the suit properties and disturbing the peaceful possession; directing the defendant to restore the sunshades attached to the suit properties; for appointing an Advocate Commissioner and directing the Advocate Commissioner to measure the suit properties and the properties of the defendant through competent surveyor and fix the boundary line between the suit properties and the properties of the defendant by means of mandatory injunction.

3. The respondent/defendant had filed written statement. At the time of trial, the petitioner/plaintiff filed an application in I.A.No.3 of 2020 for appointment of an Advocate Commissioner to make local visit and to measure the suit property along with Taluk Surveyor or competent surveyor and fix the boundary line between the suit properties.



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4. The respondent/defendant has filed counter contending that the prayer in the main suit in O.S.No.730 of 2020 and the prayer in I.A.No.3 of 2020 was one and the same and that the appointment of an Advocate Commissioner cannot be appointed for collection of evidence.

5. The trial Court, after hearing both the parties, dismissed the application, stating that in the suit, at Paragraph No.10, the petitioner had stated that the defendant had constructed building by encroaching the suit properties, whereas, in the affidavit filed in support of the application in I.A.No.3 of 2020, the petitioner/plaintiff had stated that the defendant is seriously making attempts to encroach the suit properties and further finding that the petition to appoint an Advocate Commissioner cannot be allowed for the purpose of collecting evidence, dismissed the petition, against which, the present Civil Revision Petition has been filed.

6. Learned counsel for the petitioner would submit that the respondent is making serious attempts to encroach the suit properties and he is not co-operating to fix the boundary. Since the appointment of Advocate Commissioner would



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avoid the valuable time of the Court being wasted, he has filed the application, whereas, the learned trial Judge has dismissed the same and therefore prays to set aside the same.

7. Per contra, learned counsel for the respondent/defendant would submit that the prayer in the main suit is only for appointment of Advocate Commissioner and the prayer in I.A.No.3 of 2020 was also for the very same prayer i.e., for appointment of Advocate Commissioner. The trial Court rightly finding that the prayer in the interim application as well as in the main suit is one and the same and further finding that appointment of Advocate Commissioner cannot be made for collection of evidence, dismissed the application.

8. Heard both sides and perused the materials available on record.

9. A perusal of the records would show that one of the prayers in the suit is for appointment of Advocate Commissioner. In the suit, the petitioner/plaintiff stated that the defendant had constructed building by encroaching the suit properties, whereas, in the affidavit, filed in support of the petition, seeking for appointment of Advocate Commissioner, he has stated that the



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respondent/defendant is seriously making attempts to encroach the suit properties.

Further, it appears that appointment of Advocate Commissioner has been sought for collection of evidence.

10. The trial Court, rightly found that the petition is not maintainable and dismissed the petition. I do not find any infirmity or irregularity in the order passed by the Principal District Munsif, Thiruchengode dated 20.11.2021 in I.A.No.3 of 2020 in O.S.No.73 of 2020. The Civil Revision Petition is liable to be dismissed.

11. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

02.09.2024

sr

Index:yes/no

Website:yes/no

To

The Principal District Munsif, Thiruchengode



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A.D.JAGADISH CHANDIRA,J.,

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