



C.R.P.(PD).No.3433 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM:

THE HON'BLE MR.JUSTICE P.DHANABAL

C.R.P.(PD).No.3433 of 2022

and

C.M.P.No.18204 of 2022

A.P.Krishnan

... Petitioner

VS

1.A.P.Elumalai

2.E.Isaiyammal

3.Sudha

4.Arumugam

5.Prakash

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order passed in I.A.No.366 of 2021 in O.S.No.02 of 2013 dated 16.03.2022 on the file of the District Munsif Court, Chengam, Tiruvannamalai District.

For Petitioner : M/s.R.T.Sundari

ORDER



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This Civil Revision Petition has been preferred as against the order passed in I.A.No.336 of 2021 in O.S.No.02 of 2013 on the file of District Munsif Court, Chengam, Tiruvannamalai District, wherein the petitioner herein has filed a petition before the Trial Court for appointment of Commissioner under Order XXVI Rule 9 read with Section 151 of the Code of Civil Procedure and the same was dismissed by the Trial Court. Aggrieved by the said order, the present Civil Revision Petition has been filed by the petitioner.

2. According to the petitioner, he is the plaintiff in the main suit and the suit property in S.No.46/7 to an extent of 0.62 cents is absolutely belongs to the petitioner through oral partition entered between the plaintiff and the defendants. The plaintiff, 1st defendant and 4th defendant each were allotted with 0.20 cents. The defendants also admitted that each 0.20 cents were allotted through oral partition. However in various deeds, the extents of the property are shown differently as in the eastern side 0.25 cents are available, on the western side 0.22 cents are available and on the western side only 0.15 cents are available. Hence, it becomes absolutely remeasured the suit property.



Therefore, the appointment of Advocate Commissioner is essential to measure the suit property with the help of Surveyor.

3. According to the respondents, they denied the extent of 0.62 cents belongs to the petitioner in S.No.46/7. It is true that as per the oral partition, each the plaintiff, 1st defendant and 4th defendant have allotted 0.20 cents. In the affidavit filed in support of the petition to appoint an Advocate Commissioner, it was stated that the properties were divided as 0.25 cents in east, 0.22 cents in west and 0.15 cents in west are not true. The suit is filed for the relief of declaration in respect of entire property. Therefore, the appointment of Advocate Commissioner no way helpful to this case. Even according to the averment of the petitioner only to gather the evidence, the present petition is filed. Therefore, the petition is liable to be dismissed.

4. Before the Trial Court, no oral or documentary evidence is adduced on either side and the Trial Court after hearing both sides considering the facts and circumstances of the case, dismissed the petition. As against the said order, the present civil revision petition is filed.

5. The learned counsel appearing for the petitioner would contend that



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the petitioner has filed a petition before the Trial Court for appointment of Commissioner to measure the suit property. In fact, the plaintiff, 1st defendant and 4th defendant have partitioned the properties through oral partition and each allotted 0.20 cents but in the possession, the extents of the property are varied. Therefore, the appointment of Advocate Commissioner to measure the suit property is essential. To that effect, the petitioner has filed a petition before the Trial Court, the Trial Court without considering the case of the petitioner dismissed the said petition. Therefore, the order passed by the Trial Court is liable to be set aside. The learned counsel for the petitioner relied on the judgment of the Andhra Pradesh High Court in ***Bandi Samuel and another vs. Medida Nageswara Rao (C.R.P.No.338 of 2016, dated 04.11.2016)***.

6. The learned counsel appearing for the respondent would contend that the suit is filed for the relief of declaration and permanent injunction in respect of the entire extent of the property but now, the petitioner filed a petition stating that there was a oral partition between the parties each 0.20 cents for the plaintiff, 1st defendant and 4th defendant were allotted. But in the



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grounds there is a variation of extents and thereby, he filed a petition for appointment of Advocate Commissioner to measure the suit property is essential. The said facts of the petitioner/plaintiff are totally contra to the plaint averments. Therefore, the petition has no merits. Therefore, the Trial Court after elaborate discussion dismissed the petition by holding that the petitioner has filed the suit for the relief of declaration and injunction for entire property whileso, the appointment of Commissioner for measuring the property is not proper. Therefore, the said order passed by the Trial Court is in order and the civil revision petition is liable to be dismissed.

7. This Court heard both sides and perused all the materials available on record.

8. On perusal of records, it observed that the plaintiff has filed a suit for the relief of declaration of title and consequential relief of permanent injunction in respect of the suit property for an extent 0.62 cents. In the plaint also, it was stated that the plaintiff purchased the suit property through the Sale Deed dated 24.12.1974. The suit property was not included in the



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partition dated 08.09.1987. The defendants have no right over the suit property, but they claimed right over the suit property and thereby, he filed the suit for declaration and permanent injunction.

9. Per contra, in the affidavit filed in support of the petition for appointment of Commissioner, he stated that the suit property belonged to him and based on the oral partition, the same was divided into three parts and the plaintiff, the 1st and 4th defendants are entitled to 0.20 cents each but in the enjoyment, the extents of the property varied between the parties and thereby, the property has to be measured through Advocate Commissioner along with Surveyor. The above said contention of the petitioner is not acceptable since the suit is filed for entire property and the contentions of the affidavit totally contra to the plaint.

10. The case of the plaintiff has to be decided based on the oral and documentary evidences, whileso the measurement of the property no way helpful to decide the case. Therefore, the Trial Court also after elaborate discussion correctly held that the appointment of Advocate Commissioner is



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no way helpful to decide the case. The averment of the petitioner shows that the petition is filed to collect some evidence and it is well settled law that the Commissioner cannot be appointed for collection of evidence. Further, On careful perusal of the judgment produced by the learned counsel for the petitioner in **C.R.P.No.338 of 2016** of Andhra Pradesh High Court, it will not be applicable to the facts of the present case. Therefore, the order passed by the Trial Court is in order and does not warrant interference.

11. In view of the above said discussion, this Court is of the opinion that this civil revision petition has no merits and deserves to be dismissed.

12. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

25.04.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

The District Munsif Court,
Chengam, Tiruvannamalai District.



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P.DHANABAL, J.

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