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C.R.P.No.2425 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.2425 of 2024
and CMP.No.12723 of 2024

1.Tamilselvi
2.Umapathy

... Petitioners

Vs

T.S.Murali Krishnan

... Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the order and decretal order made in I.A.No.4 of 2024 in O.S.No.40 of 2023 dated 03.04.2024 on the file of the Additional District Munsif Court at Tiruvallur and thereby allow the civil revision petition.

For Petitioners : Mr.S.Saravanakumar

ORDER

This civil revision petition arises against the order of the learned Additional District Munsif at Tiruvallur in I.A.No.4 of 2024 in O.S.No.40 of 2023. The defendants are the revision petitioners.



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2. The suit in O.S.No.40 of 2023 is one for permanent injunction. In the said suit, an application in I.A.No.4 of 2024 was taken out by the plaintiff for appointment of an Advocate Commissioner to note down the physical features, to demarcate the plaintiff's property from the defendants' property and for fixing the boundary stone based on the revenue records.

3. According to the plaintiff, the 8 ft., of land that he claims possession as the legal heir of the person, who had the benefit of gramanatham patta, falls outside the compound wall involved in the suit. The plaintiff would plead that in order to prevent the trees from being destroyed, he had constructed a compound wall inside the property leaving 8 ft., outside, which forms a part of the suit property. In order to identify the existence of plaintiff's property and the defendants property, the plaintiff had taken out an application for appointment of Advocate Commissioner to note down the physical features of the property.

4. This was resisted by the defendants. The case of the defendants/revision petitioners is that the dispute is not with respect to the



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property as claimed by the plaintiff but with respect to 8 ft., land beyond the compound wall put by the plaintiff. According to the defendant, there was no whisper about this 8 feet land in the schedule to the suit property. The plea of the plaintiff claiming possession of the suit property by virtue of a purchase made by the plaintiff's grandmother as early as 1958 was denied by the defendants. The defendants would state that the plaintiff is not in actual possession of the property and therefore, the issue of appointment of Advocate Commissioner to measure the said land does not arise. The defendants would plead that an Advocate Commissioner cannot be appointed for the purpose of procuring evidence.

5. The learned Additional District Munsif after hearing both sides, had allowed the application in I.A.No.4 of 2024 on 03.04.2024.

6. Aggrieved by the said order, the defendants as revision petitioners have filed the present civil revision petition.

7. Heard Mr.S.Saravanakumar for the petitioner. Mr.S.Saravanakumar has argued this revision reiterating along the lines of contentions in his



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counter in I.A.No.4 of 2024. He would state that the attempt of the plaintiff/respondent in appointing an Advocate Commissioner would amount to an exercise of collecting evidence through the Commissioner. He would state that P.W.1, in his cross-examination had conceded that he was not in possession of the said property and this should have been taken note of by the learned Additional District Munsif in his order dated 03.04.2024, but the learned Judge had failed to do so, and hence, it requires interference.

8. I have gone through the records carefully. While the respondent herein as petitioner before the trial Court had asked for a wide relief, the Additional District Munsif, Tiruvallur had been careful and allowed the said application stating that the Advocate Commissioner was appointed only to measure and note down the physical features of the property for the purpose of identifying the boundaries of the property. The learned District Munsif has felt it necessary to find out whether there are any other properties beyond the scope of compound wall, which is the subject matter of investigation, and this requires the help of an Advocate Commissioner. Therefore, whether the appointment of Advocate Commissioner is necessary or not, is the discretion of the learned Munsif, and unless and until there is capriciousness or



arbitrariness in his/her order, it is not capable of being revised.

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9. Secondly, the Advocate Commissioner was appointed only for the purpose of local inspection of suit schedule property and to measure the same along with the help of a surveyor who would of course measure the boundary line of the property and consequently fix the boundary stones. Such a report of the Advocate Commissioner if produced would help the Court in deciding whether the plaintiff has 8 ft., of space beyond the compound wall, which is the subject matter of litigation. The Advocate Commissioner can be appointed for the purpose of elucidating any matter in issue in the suit. In the present case, whether the 8 ft., of land falls outside the compound wall or it is within the boundaries cannot be ascertained without the report of the Commissioner. For the said purpose, the learned District Munsif has been very cautious in appointing a surveyor to accompany the Advocate Commissioner.

10. I do not find any reasons to interfere with the order of the learned



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Additional District Munsif, Tiruvallur, dated 03.04.2024 in I.A.No.4 of 2024

in O.S.No.40 of 2023. Accordingly, the civil revision petition is dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

18.07.2024

Index:Yes/No

Neutral Citation : Yes / No

Speaking order / Non-speaking order
ds

To:

- 1.The Additional District Munsif
Tiruvallur.
- 2.The Section Officer,
VR Section, High Court, Chennai.



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V.LAKSHMINARAYANAN,J.

ds

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