



WEB COPY



CRP.No.2390 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.04.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

CRP.No.2390 of 2022
and CMP.No.12327 of 2022

V.Vijaya Lakshmi

...Petitioner

Vs.

1.V.Panneer Selvam

2.Kanchana

...Respondents

PRAYER: Civil Revision Petition is filed under section 227 of Constitution of India, to set aside the order dated 17.06.2022 passed in I.A.No.5 of 2022 in O.S.No.225 of 2017 on the file of the Principal District Munsiff, Salem.

For Petitioner	:	Mrs.Elizabeth Ravi
For R1	:	Mr.B.Gopalakrishnan
For R2	:	Not ready.

ORDER

This Civil Revision Petition has been filed by the petitioner challenging the order dated 17.06.2022 passed in I.A.No.5 of 2022 in O.S.No.225 of 2017, wherein the petitioner herein has filed the said I.A before the trial Court for appointment of Commissioner under Order 26 Rule 9 of CPC and the same was dismissed by the trial Court. Aggrieved by the said order, the present civil revision petition has been filed.

2. The petitioner's case is that she is the defendant in the main suit and the respondents/plaintiffs have filed the suit for the relief of declaration for the



title over the suit property. The suit property has to be localized and demarcated as per the revenue records to know the title of the suit property . Only the identification, localization and demarcation of the suit property alone can solve the question of subject matter of the suit. On that account, Commissioner has to be appointed to localize the suit property byway of measuring the same on the strength of the revenue records in the interest of the justice.

3. The respondents contention is that the I.A is not maintainable and the case is posted for cross examination of PW1. While so, without cross examining the witness, the petitioner had filed petition for appointment of Commissioner only to delay the proceedings. There is no necessity to measure the property because the suit is only filed for the relief of easementary right based on the document Ex.A19. There is no pleading in the written statement about the measurement and demarcation of the suit property. The petitioner has filed written statement in the year 2017 and thereafter, she has not filed petition immediately and now only filed this petition. Therefore, this civil revision petition is liable to be dismissed.

4. Before the trial Court, no oral or documentary evidences adduced on either side and the trial Court has dismissed the petition. Aggrieved by the said



CRP.No.2390 of 2022

order, the present civil revision petition has been filed.

WEB COPY

5. The learned counsel for the petitioner would contend that the petitioner is the defendant in the main suit. The respondents/plaintiffs have filed the suit for the relief of declaration and the prayer in the suit is for permanent injunction from put up construction in the pathway and thereby in order to prove the existence of pathway and to identify the property, the appointment of Commissioner to note down the physical features and measuring the properties is essential to decide the case. But the trial Court failed to consider the case of the petitioner and dismissed the petition on the ground that the title of the suit property can be decided only based on the oral and documentary evidences. The advocate commissioner cannot be appointed for making an enquiry about the factum of possession and to collect the evidence. But the petition is not filed for proving the possession and to collect the evidence. The trial Court has wrongly held that the petition is filed for collection of evidences and to find out the possession. Therefore, the order passed by the trial Court is liable to be set aside.

6. The learned counsel for the respondents would contend that the respondents are the plaintiffs in the main suit and they filed suit for



declaration of the easementary right in respect of the B schedule property.

There is no dispute in respect of the identification of the property. The plaintiffs never put up any construction as alleged by the petitioner and they have easement right over the B schedule property. Therefore, the case has to be decided based on the documents filed by both the parties and the appointment of Commissioner is no way helpful to decide the case. The petitioner has filed written statement in the year 2017 but they have not filed any application much earlier and now the case is posted for trial. PW1 was examined and documents were marked. When the case is posted for cross examination of PW1, the present petition is filed by the petitioner. Therefore, the trial Court has passed a detailed order and the present civil revision petition is liable to be dismissed.

7. This Court heard both sides and perused the records.

8. In this case, the respondents herein have filed a suit for the relief of declaration in respect of the easement right over the B schedule property. According to the petitioner, he is the defendant in the suit and the petitioner attempted to put up construction over the B schedule pathway. Therefore, the appointment of Commissioner is necessary. But in the I.A, the petitioner has not stated anything about the alleged encroachment and the petition is filed stating that the suit property has be localized and demarcated as per the



CRP.No.2390 of 2022

revenue records to know the title of the suit property and only the identification, localization and demarcation of the suit property alone can solve the question of subject matter of the above suit. Therefore, in order to prove the title the Commissioner cannot be appointed. Therefore, the contention of the learned counsel appearing for the petitioner that there is a dispute for the identification of property and the measurement of property is essential to decide case is not acceptable one. The trial Court also in this context, elaborately discussed that the Commissioner cannot be appointed for collection of evidence and to prove the factum of possession. Therefore, with the available pleadings of the petition, the appointment of Commissioner is not necessary and the same is no way helpful to decide the case. Therefore, the trial Court has rightly dismissed the I.A and there is no merit in this civil revision petition and it deserves to be dismissed.

9. In the result, this civil revision petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

30.04.2024

Index : Yes/No
Speaking order/non-speaking order
mpa

P.DHANABAL, J.,

mpa



WEB COPY



CRP.No.2390 of 2022

To
The Principal District Munsiff, Salem.

CRP.No.2390 of 2022
and CMP.No.12327 of 2022

30.04.2024