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C.R.P.(PD).No.2178 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.2178 of 2021
and C.M.P.No.16528 of 2021

1.Sesnam (died)
2.Dhanalakshmi
3.Vimalraj
4.Vinothraj
Petitioners

...

vs.

Selvam

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order dated 31.03.2021 made in I.A.No.1 of 2020 in O.S.No.3 of 2020 on the file of the learned District Munsif cum Judicial Magistrate, Thandarampattu.

For Petitioners : Mr.M.Manoj

For Respondent : Mr.P.Mani



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ORDER

This Civil Revision Petition is filed challenging the order passed by the Court below dismissing the application filed by the petitioners seeking appointment of Advocate Commissioner to note down the physical features especially irrigation of suit lands through pipeline underneath the properties described in Schedules 'A' and 'B'.

2. The respondent herein filed a suit seeking declaration of title and recovery of possession in respect of suit 'A' schedule property. The suit was mainly resisted on the ground that the petitioners had been in long possession and enjoyment of the properties by virtue of exchange deed dated 06.01.1983.

3. The petitioners herein filed an application in I.A.No.1 of 2020 seeking appointment of Advocate Commissioner to note down the physical features in the suit property in order to establish the irrigation of the lands through the pipeline underneath the suit property and the availability of cart-



track on the western side of S.Nos.20/1D and 20/1C.

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4. The respondent herein filed a suit for declaration of title and recovery of possession. It is settled law that the plaintiff in a suit for title must succeed on his own strength by establishing his title. The title of the respondent has to be established by him through document and hence the appointment of Advocate Commissioner to note down the physical features mentioned by the petitioners herein is not going to help them in disproving title of respondents. The petitioners resisted the suit mainly on the ground that they are in possession and enjoyment of the suit property under exchange deed dated 06.01.1983. It is for the petitioners to prove their right and possession under the document by leading acceptable evidence. The possession of the petitioners cannot be decided based on the physical features and Advocate Commissioner's report. It is settled law possession of a party cannot be decided by Advocate Commissioner. Further the respondent has not sought for any relief in respect of cart-track mentioned by the petitioners. In such circumstances, the appointment of Advocate Commissioner to note down the physical features mentioned by the petitioners in this petition is not at all warranted and the said petition was correctly dismissed by the trial



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5. I do not find any infirmity or irregularity in the order passed by the Court below and accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

03.01.2024

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

The District Munsif cum Judicial Magistrate,
Thandarampattu.



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S.SOUNTHAR, J.

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