



WEB COPY



C.R.P.No.2959 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.2959 of 2022 and
C.M.P.No.16003 of 2022

1.Chinnasamy
2.Ranganathan

... Petitioners

Vs.

Gopal

... Respondent

PRAYER: Revision filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order dated 06.07.2022 made in I.A.No.1 of 2022 in O.S.No.249 of 2019 on the file of the Principal Subordinate Judge, Dharmapuri.

For Petitioners : Mr.V.Sakkarapani

For respondent : Ms.C.Vediappan

ORDER

This civil revision petition arises against an order dismissing an application filed under Order XXVI Rule 9 of the Code of Civil Procedure.



C.R.P.No.2959 of 2022

WEB COPY 2. O.S.No.249 of 2019 is a suit for declaration of title and for permanent injunction. There is a dispute with respect to the identity of the property as well as with respect to pathway, which runs over Survey No.51/2A, which is a subject matter of the suit property. In order to survey the land and to submit a report, an application was filed by the defendants in I.A.No.1 of 2022. This application was resisted by the respondent stoutly. According to them, if an Advocate Commissioner is to be appointed, then he should be accompanied by a surveyor and both the respondent/plaintiff as well as petitioners/defendants property must also be measured.

3. The learned Trial Judge came to a conclusion that an Advocate Commissioner cannot be appointed for the purpose of possession of the property and dismissed the application.

4. A perusal of the petition shows that the application was filed only for the purpose of noting down the physical features and to submit a report. The petitioner in no point of time had moved the Court to find out who is in possession of the property.



C.R.P.No.2959 of 2022

WEB COPY

5. When there is a dispute with respect to extent, identity and lie of the property, the Supreme Court has opined that it is always better to get a report of the Advocate Commissioner. This view was laid down in ***Haryana Wakf Board Vs. Shanti Sarup, (2008) 8 SCC 671.***

6. Following the principles laid down by the Supreme Court, the order in I.A.No.1 of 2022 dated 06.07.2022 is set aside. The application will stand allowed. The learned Trial Judge is directed to appoint a person, who is experienced in civil side, as an Advocate Commissioner. The warrant will also state that the Advocate Commissioner will take the support of the surveyor and other revenue officials during the time of survey. It is made clear that the Advocate Commissioner should measure both the plaintiff's and the defendants' property.

7. With the above directions, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

29.04.2024

Index : Yes / No



C.R.P.No.2959 of 2022

Speaking Order : Yes / No
Neutral Citation : Yes / No
Sgl

WEB COPY



WEB COPY



C.R.P.No.2959 of 2022

V.LAKSHMINARAYANAN, J.

Sgl

To

The Principal Subordinate Judge,
Dharmapuri.

C.R.P.No.2959 of 2022

29.04.2024