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C.R.P.(PD).No.2567 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.2567 of 2021
and CMP.No.19080 of 2021

A.Natesan

... Petitioner

vs.

Chinnappan

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the judgment and decree dated 15.09.2021 made in I.A.No.3 of 2021 in O.S.No.181 of 2021 on the file of the learned Subordinate Court, Mettur by allowing this Civil Revision Petition.

For Petitioner : Mr.N.Manoharan

For Respondent :Mr.M.R.Jothimanian



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ORDER

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This Civil Revision Petition is filed challenging the order passed by the Court below appointing an Advocate Commissioner to visit the suit property and note down the physical features.

2. The respondent herein filed a suit for bare injunction on the ground that the suit property was allotted to his share in the family partition dated 30.04.1984 and he was in exclusive possession and enjoyment of the suit property. The said suit was resisted by the petitioner herein by filing written statement, wherein it was stated by him that the suit property lying in Thoramangalam Village was not partitioned and the same was kept as common property. Therefore, it was the contention of the petitioner that he is in joint possession of the suit property along with the respondent.

3. The petitioner herein filed I.A.No.3 of 2021, seeking the appointment of Advocate Commissioner to visit the suit property and note down the physical features. In the affidavit filed in support of the petition seeking appointment of Advocate Commissioner, it was averred by the



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respondent that the petitioner herein was making an attempt to interfere with his possession by picking up frequent quarrels. The petitioner herein filed a counter affidavit and opposed the application on the ground that the suit is for bare injunction and the Advocate Commissioner cannot be appointed to find out the physical possession of the properties. It was also averred by the petitioner in his counter that the right and possession of the respondent over the suit property should be proved by him by leading oral and documentary evidence and appointment of Advocate Commissioner is not at all necessary. The Court below after considering the rival submissions of the parties came to the conclusion that the appointment of Advocate Commissioner is necessary to find out whether there was any partition between the parties with regard to the suit properties or not. It was also observed that the suit is not posted for trial and hence the appointment of Advocate Commissioner would not cause any prejudice to the petitioner.

4. The present suit is only for bare injunction, it is settled law in a suit for bare injunction, the plaintiff has to prove his exclusive possession by leading independent evidence and appointment of Advocate Commissioner



cannot be made to find out the physical possession of the properties. A perusal of the pleadings of the respective parties would indicate that there is a controversy with regard to the fact of partition. The respondent/plaintiff claimed that the suit property was allotted to his share in the family partition. However, the petitioner herein claims that the suit property which is lying in Thoramangalam Village was not partitioned and it was kept as common property in the family partition. Whether the suit property was partitioned or not is a matter to be decided based on the recitals found in the registered partition deed entered between the parties and to decide the said fact, the appointment of Advocate Commissioner is not necessary. Merely because appointment of Advocate Commissioner will not cause any prejudice to the petitioner herein, the application for appointment of Advocate Commissioner cannot be ordered. The party seeking appointment must make out a case for need for such appointment.

5. The respondent who seeks appointment of Advocate Commissioner must establish that appointment of Advocate Commissioner for local inspection will help the Court to decide the controversy involved in the



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suit. However, as mentioned above, in a suit for bare injunction, the respondent/plaintiff has to establish his exclusive possession by leading evidence and appointment of Advocate Commissioner cannot be made to find out the physical possession of the parties. Therefore, the impugned order passed by the Court below is set aside and the Civil Revision Petition stands allowed.

6. Having regard to the fact that the suit is the of the year 2021, the Court below is directed to dispose of the suit as expeditiously as possible.

7. Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

04.01.2024

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

The Subordinate Court, Mettur

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S.SOUNTHAR, J.

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