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C.R.P.(PD).No.3222 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.3222 of 2019

1.Syed Kadar Saheb
2.Syed Amanullah

... Petitioners

vs.

1.Paniba
2.Basha
3.Babu
4.Mubarak
5.Abdullah
6.Saddam Hussein
7.Zerinabi
8.Dilshath
9.Rajiabi

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to call for the record culminating in the order and decree dated 30.07.2019 in I.A.No.1757 of 2018 in O.S.No.316 of 2018 passed by the learned Principal District Munsif, Thirukovilur.



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For Petitioners : Mr.S.Sabarish
for M/s.S.Kingston Jerold
For Respondents : M/s.L.S.M.Hasanfzal
for R1, R4, R7, R8 and R9
R2, R3, R5-left
R6-No such person

ORDER

The 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 for measuring property with the help of surveyor and demarcate the same. The petitioners herein filed a suit for bare injunction in respect of 22 cents of property. According to the petitioners, they purchased 22 cents of land in S.No.200/4 from father of respondents 2 to 9 and husband of first respondent viz., Hassan Saheb. It was further stated that remaining 12 cents was retained by Hassan Saheb and the same lies on the northern portion of the properties purchased by the petitioners.

2. It is the case of the petitioners that the respondent attempted to interfere with possession and hence the petitioners were constrained to file the suit for bare injunction.



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3. Pending the suit, the petitioners filed an application seeking appointment of Advocate Commissioner to measure the suit property with the help of surveyor and demarcate the same. The said application was dismissed by the Court below on the ground that physical possession of the parties cannot be ascertained by an appointment of Advocate Commissioner.

4. It is seen from the averments made in the affidavit filed in support of the application, the petitioners admitted that the suit property is a vacant site. In such case, the petitioners have proved the title of 22 cents of land purchased by them and take advantage of the presumption of possession available in respect of vacant site. Therefore, absolutely, there is no necessity to measure the suit property and note down the physical features by appointment of Advocate Commissioner. In a suit for injunction appointment of Advocate Commissioner cannot be made to ascertain the physical possession of the parties.



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5. I do not find any error in the order passed by the Court below,

WEB COPY accordingly, this Civil Revision petition stands dismissed. No costs.

06.02.2024

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

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The Principal District Munsif,
Thirukovilur.



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S.SOUNTHAR, J.

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