



C.R.P.No.20 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.07.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

C.R.P.No.20 of 2022
and C.M.P.No.159 of 2022

Pachiyammal

... Petitioner

Vs

K.Jaganathan

... Respondent

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 21.09.2021 passed by the District Munsif Court in I.A.No.3 of 2021 in O.S.No.109 of 2019.

For Petitioner : Mr.S.Senthil Kumar

For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed against the order dated 21.09.2021 passed by the District Munsif Court, Rasipuram, Namakkal District in I.A.No.3 of 2021 in O.S.No.109 of 2019.

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2. The petitioner is the plaintiff and the respondent is the defendant in the suit in O.S.No.109 of 2019 filed for seeking permanent injunction and not to disturb the usage of the existing cart track shown as ABC. In the said suit, the petitioner filed an application in I.A.No.3 of 2021 under Order 26 Rule 9 and Section 151 of CPC seeking an order of appointment of an Advocate Commissioner to note down the physical features of the suit scheduled property and to file a Report with rough sketch.

3. The said application was dismissed by the Trial court by its order dated 21.09.2021. While dismissing the said application, the Trial Court held that the petitioner has to prove his enjoyment through oral and documentary evidence and cannot be proved by appointment of an Advocate Commissioner. The trial Court is of the opinion that the petitioner is trying to acquire all the favourable documents by appointment of Advocate Commissioner. On relying upon the decision of this Court in ***Chandrasekharan Vs Doss Naidu*** reported in **2005 (3)**

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MLJ 473, the Trial Court dismissed the application of the petitioner.

Aggrieved by the same, the present CRP has been filed.

4. The learned counsel for the petitioner submits that the vendors of the petitioner are having a house and agricultural lands to the western side of the cart track, which is shown as 'A to B' and that they have right to use the cart tract to reach their house and lands. The existing cart track and the physical feature of the same and its usage will come to light if the Advocate Commissioner inspects the suit property. The learned counsel further submits that it is just and enecessary to appoint an Advocate Commissioner to note down the physical features of the suit schedule property particularly with regard to the existence of the cart track. The learned counsel submits that no pejudice will be casued to anybody by appointing an Advocate Commissioner to note down the physical features of the suit scheduled property and it is useful for proper adjudication of the suit and sought to allow the Civil Revision Petition by setting aside the order of the Trial Court.

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5. In spite of service of notice, there is no representation either in person or through an Advocate for the respondents.

6. Having heard the submissions of the learned counsel for the petitioner and on perusal of the material available on record, it appears that to submit a Report with rough sketch with regard to the existence of the cart track pertaining to the suit schedule property, the petitioner has filed an application seeking to appoint an Advocate Commissioner. The Court below dismissed the same holding that the petitioner is trying to acquire favourable documents by appointing an Advocate Commissioner. But, in our considered opinion by appointing an Advocate Commissioner to note down the physical features of the suit scheduled property and particularly with regard to the existence of the cart track, it is very much useful for better adjudication of the issue involved in the suit. By appointing an Advocate Commissioner, no prejudice will be caused to the defendants. The defendants can also participate in the proceedings of the Advocate Commissioner in

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inspecting the suit scheduled property. The defendants shall also be given an opportunity to raise their objections if any against the Report of the Advocate Commissioner.

7. Considering all these aspects, in our considered view, the opinion of the Court below that the petitioner asking appointment of the Advocate Commissioner only to require the favourable documents is not well founded. Accordingly, the order of the Trial Court dated 21.09.2021 in I.A.No.3 of 2021 in O.S.No.109 of 2019 is set aside and the matter is remitted to pass orders for appointment of an Advocate Commissioner.

8. Accordingly, this Civil Revision Petition is allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking order : Yes/No
Neutral Citations : Yes/No

BATTU DEVANAND,J.

gba

To

The District Munsif Court,
Rasipuram.

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