



C.R.P.No.3699 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2024

CORAM:

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.3699 of 2023
and CMP.No.23155 of 2023

Subramaniyan

... Petitioner

Vs

Murugan

... Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order passed in I.A.No.452/2021 in O.S.No.455 of 2019 dated 19.06.2023 pending on the file of the learned Principal Subordinate Judge, Kallakurichi and consequently dismiss the I.A. seeking for appointment of Advocate Commissioner.

For Petitioner : Mr.S.N.Subramani

For Respondent : Mr.V.Vijayakumar
for Mr.S.Ramajayam



C.R.P.No.3699 of 2023

WEB COPY

ORDER

There are suits and counter suits. The revision petitioner as plaintiff had laid a suit in O.S.No.455 of 2019 on the file of Principal Subordinate Court, Kallakurichi, against one Murugan and 8 others for declaration of title and injunction. The said Murugan who is the first defendant in O.S.No.455 of 2019, on his part, had filed a suit in O.S.No.260 of 2022 on the file of the Principal Subordinate Court at Kallakurichi, against the plaintiff in O.S.No.455 of 2019 for a similar relief. It is to be noted that Murugan had even approached this Court in CRP.No.2316 of 2023 seeking a direction to dispose of the suit in O.S.No.455 of 2019, and had also obtained an order of this Court dated 14.07.2023 to dispose of the said suit within a period of 12 months. More about this later.

2. Parties would be referred to as per their rank in O.S.No.455 of 2019.

3. Be that as it may, Murugan had filed an application in I.A.No.452/2021 in O.S.No.455/2019, for appointing an Advocate Commissioner to measure the suit property with the help of a surveyor and to



submit a report before the Court. His claim is that his father had purchased the property in 1974 and over this very property, a suit had been filed in O.S.No.212/2014, which ended in a compromise award passed by the Lok Adalat. He would state that on and from the date of the award, he has taken possession and enjoyment of the same. The total extent of the property in Survey No.193/5, which is the suit schedule mentioned property, is about 3 acres and 11 cents. The defendant claims that he is entitled to 36 cents in the aforesaid extent. This application came to be allowed. Hence, the revision by the plaintiff.

4. The issue that is presented before the Court is for identification of the property. While it is the duty of the plaintiff to prove his title to the property, if the report of the Advocate Commissioner would be in aid and assistance to the Court for the purpose of elucidating the matter in issue, then it could certainly be received in evidence under Order XXVI Rule 10 CPC. By appointing an Advocate Commissioner, the Court has not permitted the defendant to find out who is in possession of the property. Had it been so, I have to certainly interfere with the order in revision. All that was intended by the first defendant was to locate the property. The learned Trial Judge



exercising her discretion, had held that the appointment of Advocate Commissioner would help in disposal of the suit, and thereby allowed the application. I would agree with her opinion that by appointment of Advocate Commissioner, no prejudice would be caused to the plaintiff. As pointed out during the commencement of this order, the plaintiff's grievance appears to be that he is vexed with one counter claim after the other and the respondent seems to be increasing the litigation in the Court as well as the agony of the plaintiff.

5. I feel if a direction is given to the learned Trial Judge for disposal of O.S.No.455 of 2019 along with O.S.No.260/2022, it would result in both the parties knowing their respective rights over the property in lie. Therefore, while confirming the order of the learned Trial Judge appointing an Advocate Commissioner and taking note of the fact that there was a direction given by this Court in CRP.No.2316 of 2013 on 14.07.2023 to dispose of the suit in O.S.No.455 of 2019, I request the learned Principal Subordinate Judge, Kallakurichi to try O.S.No.No.455 of 2019 along with O.S.No.260 of 2022 and dispose of the same by a common judgment within the time fixed by this Court in the revision already disposed of on 14.07.2023.



WEB COPY



C.R.P.No.3699 of 2023

6. With the above observation, this civil revision petition is dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

04.06.2024

Index:Yes/No

Internet : Yes / No

Speaking order / Non-speaking order
ds

To:

1.The Principal Subordinate Judge
Kallakurichi.

2.The Section Officer
VR Section, High Court, Chennai.



WEB COPY



C.R.P.No.3699 of 2023

V.LAKSHMINARAYANAN,J.

ds

C.R.P.No.3699 of 2023

04.06.2024