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C.R.P.(PD).No.3574 of 2019

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 11.03.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**C.R.P.(PD).No.3574 of 2019**

**and**

**C.M.P.No.23423 of 2019**

Sankaran

... Petitioner

VS

1.Rangasamy Gounder

2.Manikkammal

3.Dilli Raju @ Gangu

4.Kuppan

5.Govindaraj

6.Ellammal

7.Raja

8.Manimaran

9.Malathi

10.Poongodi

1/6



C.R.P.(PD).No.3574 of 2019

11.Selvi

12.Shanthi

13.Sundar

... Respondents

**Prayer:** Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 05.09.2019 passed by the District Munsif, Katpadi in I.A.No.350 of 2017 in O.S.No.179 of 2016 and by allowing the Civil Revision Petition.

For Petitioner : DR.P.Vasudevan

For R1, R3 to R11 : Mr.P.Mani

For R2, R12 and R13 : Not Ready in Notice

### **ORDER**

The Civil Revision Petition is filed challenging the order passed by the Trial Court dismissing the application filed by the petitioner for appointment of Advocate Commissioner to inspect the suit schedule property and to note down the physical features and measure the suit property with help of Surveyor.



C.R.P.(PD).No.3574 of 2019

2. The petitioner herein filed a suit for declaration of title and permanent injunction. Pending suit, the instant application has been filed by the petitioner seeking appointment of Advocate Commissioner to measure the property with the help of Surveyor and to note down the physical features.

3. In the affidavit filed in support of the petition, it was stated by the petitioner that in the written statement the respondents 1, 6 and 7 pleaded that there were superstructures put up by them in the suit property and they had been in possession and enjoyment of the same for more than 30 years. In such circumstances, the appointment of Advocate Commissioner was necessary to find out the existence of superstructures in the suit property.

4. The Trial Court dismissed the application on the ground that the petitioner has to prove his title and possession by independent evidence and hence, appointment of Advocate Commissioner is not at all necessary. Aggrieved by the same, the petitioner is before this Court.



WEB COPY 5. The learned counsel appearing for the petitioner submitted that while dismissing the application it was observed by the Trial Court earlier an injunction suit was filed by the petitioner in respect of very same property and pending second appeal filed against decree passed in injunction suit, the present application has been filed and hence, it was not maintainable. The learned counsel further submitted that reasoning given by the Trial Court for dismissing the application is not at all acceptable.

6. It is seen from the pleadings that petitioner seeks a declaration of title and injunction. In a suit for title, the petitioner/plaintiff must prove his title and possession independently by leading evidence. Therefore, the appointment of Advocate Commissioner to note down the physical features is not at all necessary. In the pleading there is no controversy with regard to the extent of the suit property. In such circumstances, there is no necessity to measure the suit property with the help of Surveyor. The Trial Court rightly came to the conclusion the appointment of Advocate Commissioner to measure the suit property with the help of Surveyor was not at all warranted



C.R.P.(PD).No.3574 of 2019

in the light of the position taken by the parties in their respective pleadings.

Hence, I do not find any error in the order passed by the Trial Court.

7. Accordingly, the Civil Revision Petition stands dismissed. No costs.

Consequently, the connected civil miscellaneous petition is closed.

**11.03.2024**

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

To

The District Munsif,  
Katpadi.



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C.R.P.(PD).No.3574 of 2019

**S.SOUNTHAR, J.**

dm

**C.R.P.(PD).No.3574 of 2019**

**11.03.2024**