



C.R.P.No.4160 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2024

CORAM

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.R.P.(PD)No.4160 of 2022
and C.M.P.No.21772 of 2022

1.Lakshmiammal
2.Ganesan
3.Arjunan
4.Pushpa
5.Narmatha
6.Gokula Krishnan
7.Maheswari

...Petitioners/Respondents/Defendants

-Vs-

Kala

...Respondent/Petitioner/Plaintiff

Prayer:- Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the order dated 03.11.2022 made in I.A.No.3 of 2022 in O.S.No.139 of 2019 on the file of the learned Sub Court, Mettur.

For Petitioners : Mr.C.Harish

For Respondent : Mr.M.R.Jothimanian



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ORDER

This Civil Revision Petition has been preferred as against the order passed in I.A.No.3 of 2022 in O.S.No.139 of 2019, wherein the respondent herein has filed a petition before the trial Court for appointment of Advocate Commissioner under order 26 rule 9 & Section 151 of CPC and the said petition was allowed by the trial Court. As against the said order, the present Civil Revision Petition has been filed by the respondents therein.

2. According to the petitioners herein, they are defendants in the suit and the respondent herein is the plaintiff. The plaintiff had filed a suit for relief of permanent injunction. In the above suit, the respondent/plaintiff herein has filed a petition for appointment of Advocate Commissioner by stating that she is entitled the property through sale deed on 14.05.2012 and the same is not correct. Further, the respondent/plaintiff falsely alleged in the petition that the petitioners herein had trespassed into the property. In fact, only to collect the evidence, she filed a petition for appointment of Advocate Commissioner. Even according to the respondent/petitioner/plaintiff, the suit is only filed for permanent injunction and there is no requirement for appointment of Advocate Commissioner and the case has to be decided, based on the available



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documents. The trial Court has failed to consider the same and appointed the Advocate Commissioner and the respondent/petitioner/plaintiff has not sought for any relief for damages. While so, the appointment of Advocate Commissioner is no way helpful to decide the case. However, the trial Court appointed the Advocate Commissioner and thereby the present petition filed challenging the order passed by the trial Court and the same is liable to be set aside. Hence, this Civil Revision Petition has been filed.

3. According to the respondent, she is entitled the schedule of property through settlement dated 14.05.2012 and based on the above said settlement deed, she has been in possession and enjoyment of the property. The petitioners/respondents/defendants have damaged the suit property. Already the suit in O.S.No.559 of 1995 was filed on the file of District Munsif Court, Mettur and the suit was decreed. As per the decree, the sale deed dated 20.07.1989 executed in favour of K.Raju Gounder was declared as null and void through decree dated 12.02.1996. Thereafter, the present suit was filed by the plaintiff. While the suit is pending, the petitioners/respondents/defendants without filing written statement, in order to grab the the suit property unlawfully they damaged the thatched house. To prove the same, the appointment of Advocate Commissioner is necessary. The trial Court after



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considering the facts and circumstances of the case allowed the petition.

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4. Before the trial Court, no oral or documentary evidence adduced on both sides and the trial Court after hearing both sides allowed the petition and appointed an Advocate Commissioner to note down the physical features.

5. The learned counsel for the petitioners contented that the respondent herein has filed a suit for the relief of permanent injunction. During pending of the suit, a petition was filed by the petitioner for appointment of Advocate Commissioner. The appointment of Advocate Commissioner is no way helpful in this case and only to gather evidence he filed the petition, but the trial Court without considering the same allowed the petition. Therefore, the order passed by the trial Court is liable to be set aside. Since the suit is only for the relief of permanent injunction, the appointment of Advocate Commissioner is not necessary. To support his contention he relied on the judgment of this Court in i) *S.Chinnaiya Reddy and another Vs. K.Chidambaram and others in CRP(PD).No.2249 of 2018*, ii) *Palanivel and another Vs. Nagarajan and others in CRP(PD).No.2029 of 2016* and iii) *P.Jeyachandran Vs.V.Appanraj in CRP(PD)(MD).No.539 of 2014*.



6. The learned counsel appearing for the respondent would content that the petitioner trespassed into the suit property and damaged the portion of the properties and also damaged the thatched house and thereby filed a petition for appointment of Advocate Commissioner and the trial Court after pursuing the records carefully, allowed the petition and appointed an Advocate Commissioner only to note down the physical features. Therefore, the appointment of Advocate Commissioner is necessary and the order passed by the trial Court is in order and the present petition is liable to be dismissed.

7. This Court heard both sides and perused the materials available on record.

8. According to the petitioners, the respondent herein has filed the suit for permanent injunction, based on the settlement deed and during pending the suit, the respondent herein filed a petition for appointment of Advocate Commissioner to note down the physical features alleging that the defendants have damaged the suit property. In fact the petition is filed only to collect the evidence and in a suit for bare injunction, no need of appointment of Advocate Commissioner. Therefore, the trial Court order for appointment of Advocate Commissioner is erroneous.

9. According to the respondent, she filed a suit for bare injunction,



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however the petitioners herein damaged the thatched house situated in the suit property. Therefore, the appointment of Advocate Commissioner is essential to decide the case.

10.The plaintiff has filed the main suit for the relief of permanent injunction and not for damages however the respondent taken plea that the petitioners damaged the thatched house of the respondent and thereby filed a commission petition and the same is only to note down the physical features and the damaged thatched house. In this context the learned counsel appearing for the petitioners has relied the judgements in i) *S.Chinnaiya Reddy and another Vs. K.Chidambaram and others in CRP(PD).No.2249 of 2018*, ii) *Palanivel and another Vs. Nagarajan and others in CRP(PD).No.2029 of 2016* and iii) *P.Jeyachandran Vs.V.Appanraj in CRP(PD)(MD).No.539 of 2014*. On a careful perusal of those judgments, it is clear that in a suit for permanent injunction Advocate Commissioner cannot be appointed to note down the physical features of the property and when there is no dispute in respect of identification of the property Commissioner cannot be appointed. In the case on hand though the prayer is only for bare injunction, during pendency of the suit the properties alleged to have been damaged, thereby the petitioner filed this petition. Therefore, the above said case laws will not be applicable to



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the present facts of the case. The trial Court has only appointed the Commissioner to note down the physical features since the petition is filed stating that during pendency of the suit the property was damaged. Though the trial Court has not passed elaborate order and only docket order alone produced by the petitioners the same will not affect the case of the parties. Therefore, there is no infirmity or perversity found in the order of the trial Court and does not warrant any interference.

11. In the result, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is also closed. No costs.

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Index : Yes/No
Speaking order/Non-speaking order
Neutral Citation: Yes/No
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P.DHANABAL, J

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To

The Sub Court, Mettur.

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