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C.R.P.No.4218 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.4218 of 2019 and
CMP.No.27498 of 2019

M. Veerabathiran

... Petitioner

Vs.

1. A. Kasi @ Kasinathan

2.K. Yesudass

3.K. Edwin

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Fair and Decreetal order in I.A.No.125 of 2019 in O.S.No.29 of 2019 dated 23.10.2019 passed by the learned District Munsif cum Judicial Magistrate at Thirukalukundram.

For Petitioner : M/s.R.Surya Prakash

For Respondents : M/s.J. Arun Prasad

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 to note down the physical features and measure the suit property owned by the petitioner and the respondents.



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2. The petitioner herein filed a suit for bare injunction against the respondents. It is the case of the petitioner that suit property was originally possessed and enjoyed by grandmother of the petitioner namely Sokkammal. After her death, her only son Munusamy succeeded to her estate and enjoyed the suit property and he died on 29.09.2008. After his death, the plaintiff, being a son of Munusamy, has been in possession and enjoyment of the suit property. The respondents, who are neighbours of the suit property, made an attempt to interfere with the possession and hence, he was constrained to file a suit for bare injunction against the respondents

3. The respondent herein filed a written statement denying the title as well as possession of the petitioner.

4. Therefore, the main controversy involved in this suit is with regard to the possession of the petitioner, he has to prove his right as well as lawful possession in the suit property by leading independent evidence to decide the possession of the properties. It is settled law that physical possession of the



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parties cannot be ascertained by appointment of Advocate Commissioner.

Therefore, the Court below rightly dismissed the application filed by the petitioner by stating that appointment of Advocate Commissioner is not necessary to ascertain physical possession of the parties. In these circumstances, I do not find anything to interfere with the order passed by the Court below.

5. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

05.02.2024

Index : Yes / No

Internet : Yes / No

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To

The learned District Munsif cum Judicial Magistrate, Thirukalukundram.



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S.SOUNTHAR, J.

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