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C.R.P.No.4956 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2024

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Civil Revision Petition No.4956 of 2023

and

Civil Miscellaneous Petition No. 29067 of 2023

Devasitham

...

Petitioner

Vs

Sri Muthu @ Muthusamy

...

Respondent

Prayer: Civil Revision Petition has been filed under Article 227 of the Constitution of India to set-aside the order dated 05.06.2023 passed I.A.No.3 of 2022 in O.S.No.249 of 2022 by the learned Principal Subordinate Judge, Chengalpattu, consequently order for the appointment of Advocate Commissioner in respect of the suit property for the proper adjudication of the case by allowing this Criminal Revision Petition.

For Petitioner : Mr P.Santhaseelan



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ORDER

Challenging the order of dismissal passed by the learned Principal Subordinate Judge, Chengalpattu in I.A.No.3 of 2022 in O.S.No.249 of 2022, the Civil Revision Petition has been filed.

2. The learned counsel for the petitioner submitted that the respondent/plaintiff has filed a suit in O.S.No.249 of 2022 on the file of the Principal Subordinate Court, Chengalpattu, for permanent injunction restraining the defendant, his men including his political persons, agents from in any way interfering with the suit property. Pending suit, the plaintiff had filed an application in I.A.No.3 of 2022 under Order VII Rule 1 and Section 26 of CPC to appoint an Advocate Commissioner to visit the suit property and measure the same with the help of surveyor attached to the Taluk Office, Thiruporur as per the title deed and patta of the petitioner. The learned Trial Judge, by an order dated 05.06.2023, dismissed the said petition on the ground that the suit being a relief of permanent injunction and the defendant



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had also disputed the title over the property, and therefore, Commissioner cannot be appointed to collect evidence, and it has to be proved by the parties before the Court and dismissed the application, which is under challenge.

3. The learned counsel for the petitioner further contended that the Commissioner has to note down the physical features of the property in order to establish his case before the Court.

4. I have considered the matter in the light of the submission made by the learned counsel for the petitioner and also perused the materials available on record carefully.

5. On perusal of the materials, it reveals that the petitioner is the plaintiff and the respondent is the defendant in O.S.No.249 of 2022 on the file of the Principal Subordinate Court, Chengalpattu. The suit has been filed for permanent injunction restraining the defendant, his men including his political persons, agents from in any way interfering with the suit property. In the said



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suit, the petitioner/plaintiff had filed an application in I.A.No.3 of 2022 seeking to appoint an Advocate Commissioner to measure the property with the help of Taluk Surveyor attached to the Taluk Office, Thiruporur. The Trial Court, after considering the nature of the prayer and the issue involved in the suit property, found that appointment of commissioner is unwarranted to decide the suit and passed the impugned order. The relevant portion of the impugned order reads as follows:-

“ 7. On considering the pleadings and rival pleadings, the real dispute between the parties are relating to Title, right over the suit property. It is relevant to note that local investigation is unnecessary for deciding the issues relating to lawful Right, Title, Ownership, Possession and enjoyment over the suit property. The defendant also raised a pleading of impersonation of K.Shanmugam, manipulation, Fabrication. Therefore, this Court is not inclined to appoint Advocate Commissioner for deciding the aid issues. To add, the plaintiff cannot seek aid of the Court to gather evidences regarding possession and enjoyment of the suit property. The plaintiff has to succeed the case on his own strength. This is not the fit case to appoint Advocate Commissioner. Hence the application deserves dismissal.”



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6. Admittedly, the suit is filed only for permanent injunction and the respondent/defendant Considering the nature of the prayer and there is dispute with regard to the title over the suit property and hence, appointment of Commissioner is unwarranted. Therefore, the Trial Court rightly dismissed the petition filed for appointment of commissioner. Hence, I find no reason to interfere with the impugned order and I find no merit in this revision and the same is liable to be dismissed.

7. Accordingly, this Civil Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

04.01.2024

Index: yes/no
Internet:yes/no
mrp

To

The Principal Subordinate Judge,
Principal Subordinate Court,
Chengalpattu.

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V. SIVAGNANAM, J.

mrp

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