



C.R.P.(MD)No.591 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2024

CORAM:

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(MD)No.591 of 2020

and

C.M.P(MD) No.3753 of 2020

Aruppukottai Town Thevangar
Commercial Association,
(Sangam Reg. No.7/1947)
Through its President,
Soundamman Kovil Street,
Aruppukotai Town
Virudhunagar District.

... Petitioner

Vs.

Moses

... Respondent

PRAYER : Petition filed under Article 227 of the Constitution of India, to allow the civil revision petition and set aside the fair and decreetal order dated 03.02.2020 made in I.A.No.3 of 2019 in R.C.O.P.No.3 of 2014 on the file of Principal District Munsif Court, Aruppukottai.

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For Petitioner : Mr.A.Arumugam
for M/s.M.Ajmal Associates

For Respondent : No appearance

ORDER

This civil revision petition is filed against the order dated 03.02.2020 passed in I.A. No.3 of 2019 in RCOP No.3 of 2014 on the file of Principal District Munsif Court, Aruppukottai. The said application was filed by the petitioner herein seeking appointment of an advocate commissioner under Order 26 Rule 9 of CPC to verify as to whether the respondent is running the saw mill in the petition mentioned property or not. The learned trial Court, having taken note of the fact that the respondent had already admitted to the effect that the saw mill was not functioning at the petition mentioned property, declined the appointment of the advocate commissioner and held that the said application was filed only with a view to drag on the proceedings.



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2. On perusal of the materials on records, it is evident that there is enough material to show that the respondent is not running the saw mill as on date of filing the petition before the trial Court. However, it is contended by the learned counsel for the petitioner herein that not only for the purpose of verifying as to whether the saw mill in question is running or not, but also to show that the value of the petition mentioned property is being diminished because of the acts of the respondent and therefore, appointment of advocate commissioner was sought for. The trial Court has observed that the attempt made by the petitioner herein is with a view to gather evidence with the help of advocate commissioner. It is settled law that it is for the petitioner who approached the Court to establish his case and succeed and it is only in the event when the Court felt that there is any dispute arose with regard to the physical features of the property or any factual description is lacking inspite of both the parties adducing evidence and if the Court feels that any further information is required to be gathered, then the question of appointing an advocate commissioner under order 26 rule 9 would arise.



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3. The application in question is filed only after examining P.W.1 alone on behalf of the petitioner herein and therefore, this Court does not find any error or illegality in the order under revision. However, it is made clear that in case the trial Court feels that appointment of an advocate commissioner is necessary after concluding the evidence of both the parties, and in case any of the parties make such an application, the same shall be considered by the trial Court depending upon the circumstances at the relevant point of time and pass appropriate orders in accordance with law without reference to the order under revision. Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

21.02.2024

Index :Yes/No
Internet :Yes/No
NCC :Yes/No
cp

To

The Principal District Munsif, Aruppukottai.

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MUMMINENI SUDHEER KUMAR, J.

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