



CRP(MD)No.1032 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

CRP(MD)No.1032 of 2021
and
C.M.P(MD)No.5989 of 2021

R.P.Sakthivel

... Petitioner

Vs

A.Thukkaiyee Gounder

... Respondent

Prayer:

This Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.641 of 2017 in O.S.No.372 of 2017 on the file of the Sub Court, Palani dated 13.02.2020.

For Petitioner : Mr.C.Aravindan
for Mr.D.Venkatesh

For Respondent : Ms.K.Siva Tharsana
for Mr.M.P.Senthil

ORDER

The Civil Revision Petition is filed to set aside the fair order and decreetal



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order dated 13.02.2020 in I.A.No.641 of 2017 in O.S.No.372 of 2017 on the file of the Subordinate Court, Palani.

2. The revision petitioner/plaintiff has filed a suit in O.S.No.372 of 2017 before the Subordinate Court, Palani for declaration and consequential permanent injunction against the respondent/defendant. Pending suit, the revision petitioner/plaintiff has filed an application in I.A.No.641 of 2017 for appointment of Advocate Commissioner under Order 26 Rule 9 C.P.C. on the ground that unless and until the Advocate Commissioner is appointed, they cannot disprove the additional discrepancies in the suit as claimed by the respondent/defendant by way of his written statement. The trial Court had dismissed the said application by mainly stating that the revision petitioner/plaintiff has only been attempting to show the possession of the property indirectly through appointment of Advocate Commissioner. Challenging the said order, the present revision came to be filed.

3. The learned counsel appearing for the respondent/defendant vehemently contends that the revision petitioner/plaintiff has not produced any evidence to prove his case but merely filed an application for appointment of Advocate Commissioner for to say that the suit property is an exclusive right of the revision petitioner/plaintiff.



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4. The trial Court has rightly dismissed the application in I.A.No.641 of 2017 on the ground that since the revision petitioner/plaintiff has filed a suit for declaration of title along with the prayer of permanent injunction, it is the duty of the revision petitioner/plaintiff to prove his case by adducing evidence before the Court and no advocate commissioner can be appointed for collecting or gathering evidence. Hence, this Court seems there is no illegality in the order passed by the trial Court.

5. With the above observations, the Civil Revision Petition is disposed of with a direction to the learned Subordinate Judge, Palani, to dispose of the suit in O.S.No.372 of 2017 within a period of one year from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

18.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
csm

To

1. The Subordinate Judge, Palani.



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N.SENTHILKUMAR, J.

csn

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