



CRP(MD).No.1360 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.11.2024

CORAM

THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.1360 of 2022 and
CMP(MD).No.5653 of 2022

Thangam Alais Nagaraj

: Petitioner / Plaintiff

Vs.

1.Renugadevi

2.Krishnan

: Respondents / defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order, dated 11.04.2022 passed in I.A.No.56 of 2020 in O.S.No.177 of 2017 on the file of the Principal District Munsif Court, Thirumangalam.

For Petitioner

:Mr.S.N.Vallianayagam

For respondent

: Mr.A. Gopal

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated, 11.04.2022 made in I.A.No.56 of 2020 in O.S.No.



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177 of 2017 on the file of the Principal District Munsif Court, Thirumangalam.

2. The revision petitioner as plaintiff filed the above suit in O.S.No. 117 of 2017 on the file of the Principal District Munsif Court, Thirumangalam for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. Pending suit, the revision petitioner / plaintiff filed an application in I.A.No. 56 of 2020 for appointment of an Advocate Commissioner to inspect the suit property and file a report and the same was resisted by the respondents / defendants stating that existence of the suit "B" schedule property is not denied by the respondents and also admitted that both the petitioner as well as the respondents are using the said pathway and therefore, there is no necessity for appointment of an Advocate Commissioner to note down the physical features. The trial Court also considering the above submission made by both sides dismissed the said application stating that since the suit is for bare injunction, the Commissioner cannot be appointed for collecting evidence. Aggrieved by the same the present revision is preferred.



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3. The learned counsel appearing for the revision petitioner / plaintiff would submit that the respondents herein disputed the rough sketch annexed with the plaint and therefore, there is a dispute with regard to the suit property. He would further submit that in the written statement the respondents / defendants have stated that the revision petitioner has encroached the “B” schedule pathway and hence, it is necessary to appoint an Advocate Commissioner and the same was not considered by the trial Court and erroneously dismissed the application, which calls for interference by this Court.

4. The learned counsel appearing for the respondents / defendants would submit that the respondents / defendants that there is no dispute with regard to the common pathway described as “B” schedule and hence, there is no necessity to appoint an Advocate Commissioner and the trial Court has rightly dismissed the application and prays for dismissal of this Civil Revision Petition.

5. Heard both sides and perused the materials available on record.

6. The revision petitioner as plaintiff filed the above suit in O.S.No.



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177 of 2017 for the relief of permanent injunction restraining the defendants from interfering with the revision petitioner / plaintiff's peaceful possession and enjoyment in “ A” and “B” schedule of the suit properties. Pending suit, the revision petitioner / plaintiff filed an application for appointment of an Advocate Commissioner to inspect the pathway described as “ B” schedule in the suit. The said application was resisted on the side of the respondents / defendants by filing counter affidavit, in which it is stated that the respondents / defendants never denied the existence of pathway in the “ B” schedule property and that the plaintiff and the defendants are using the “ B” schedule Pathway and therefore, it is not necessary for appointing an Advocate Commissioner for noting down the alleged pathway. The further contention of the respondents / defendants is that the revision petitioner / plaintiff filed the above application with an intention to drag on the proceedings. Hence, it is liable to be dismissed. The trial Court after considering the averments made in the petition as well as the counter affidavit dismissed the said application by its order, dated 11.04.2022. Aggrieved by the same, the present revision is preferred. The issue involved in this revision is that whether the Advocate Commissioner can be appointed to note down the “B” schedule pathway. Admittedly, the suit is for bare injunction



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restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiff in the suit “ A” and “ B” schedule property.

Therefore, the dispute in this case is as to whether “ B” schedule pathway exclusively belonging to the plaintiff or it is a common pathway.

Therefore, in this case, the plaintiff has to prove his right of enjoyment is exclusively right of enjoyment in the disputed pathway. This factum cannot be allowed by way of appointing an Advocate Commissioner which would lead to collection of evidence. It is well settled principle of law that in a suit for bare injunction, the appointment of Advocate Commissioner cannot be ordered to collect the evidence. Therefore, considering the facts and circumstances of the case, following the well settled proposition of law laid down by the Hon'ble Apex Court and this Court in various decisions to the effect that the Advocate Commissioner cannot be appointed for making enquiry about the usage of disputed property, this Court is of the view that the trial Court was right in dismissing the application filed by the revision petitioner / plaintiff. Hence, this Court finds that there is no perversity or infirmity in the order passed by the trial Court.



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7. In the result, this Civil Revision Petition is dismissed confirming the order, dated 11.04.2022 made in I.A.No.56 of 2020 in O.S.No.177 of 2017 on the file of the Principal District Munsif Court, Thirumangalam. No costs. Consequently, the connected Miscellaneous Petitions are closed.

15.11.2024

Index : Yes / No
Internet : Yes/ No
trp

To
The Principal District Munsif Court,
Thirumangalam.



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K. GOVINDARAJAN THILAKAVADI, J.,

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