



C.R.P(MD)No.1850 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

C.R.P(MD)No.1850 of 2023
and C.M.P. (MD)No.9289 of 2023

Sankaralingam

...Petitioner/Petitioner/Plaintiff

Vs.

1.Selvaraj

2.Madamuthu

3.Murugan

...Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 12.01.2022 made in I.A.No.2 of 2021 in O.S.No.47 of 2017 on the file of the Sub Court, Ambasamudram.

For Petitioner : Mr.A.Sankararamasubramanian

For Respondents : Mr.Alwin Balan



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ORDER

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This Civil Revision Petition is filed against the order dated 12.01.2022 made in I.A.No.2 of 2021 in O.S.No.47 of 2017 on the file of the Sub Court, Ambasamudram.

2. The revision petitioner has filed O.S.No.47 of 2017 on the file of the Sub Court, Ambasamudram, for declaration, permanent injunction and mandatory injunction against the defendants. In the said suit, the plaintiff filed an interlocutory application in I.A.No.2 of 2021 for appointment of an Advocate Commissioner to measure the suit property and file a report.

3. The respondents herein are the defendants. They have filed a counter affidavit before the trial court by stating with an intention to collect evidence, the application for appointment of an Advocate Commissioner is filed by the plaintiff.



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4. On perusing the affidavit filed by the revision petitioner/ plaintiff and counter affidavit filed by the respondents and after hearing both sides, the trial Court dismissed the petition. In the dismissal order dated 12.01.2022 the trial court has stated that no specific reason for appointing an Advocate Commissioner is mentioned by the petitioner and the petitioner has not sought for an aid of a Surveyor and no reason is stated for the delay in filing the petition. It is further stated that if an Advocate Commissioner is appointed, it would give additional burden to the defendants to put forth their case and further, there is bar for the plaintiff to collect evidence by appointing an Advocate Commissioner. Aggrieved over the same, the present Civil Revision Petition is filed.

5. The learned counsel for the petitioner would submit that when the defendants 2 and 3 specifically disputed the measurement and the boundaries of the suit property in their written statement, the appointment of Advocate Commissioner is necessary to find out the disputed boundaries and physical features. He prayed for setting



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aside the dismissal order of the trial court.

6. The learned counsel for the respondents would submit that the petitioner/plaintiff has filed the petition to appoint an Advocate Commissioner only to collect the evidence and the trial court has rightly dismissed the same. He would further submit that the order of the trial court needs no interference by this Court

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

8. Considering the facts and circumstances of the case, this Court is of the view that it is a fit case to issue a direction to Sub Court, Ambasamudram. to appoint an Advocate Commissioner.

9. Accordingly, the Civil Revision Petition is allowed by setting aside the order dated 12.01.2022 made in I.A.No.2 of 2021 in O.S.No.47 of 2017 on the file of the Sub Court, Ambasamudram.



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The matter is remitted back to the trial Court for fresh consideration.

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Considering the fact that the suit is of the year 2017 and the application for appointment of Advocate Commissioner is of the year 2021, the trial Court shall appoint an Advocate Commissioner as quickly as possible and after the measurement of the property, proceed with the trial and conclude the same as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is also closed.

12.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
CM

To

1. The Additional District Munsif Court, Ambasamudram.

2. The Section Officer, V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J.

CM

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