



C.R.P.PD(MD)No.851 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.PD(MD)No.851 of 2020

&

C.M.P.(MD).No.5678 of 2020

Narayanasamy

... Petitioner

Vs.

Gomathi Nagarajan(died)

1.M.Rajkanna

2.R.Muthulakshmi

3.N.Krishnamoorthy

4.J.Parvatham

5.Rajalakshmi

6.Meenaloshini

7.K.Lalitha

8.K.Balaji

... Respondents



C.R.PD(MD)No.851 of 2020

7th and 8th respondents
impleaded vide order of this
Court dated 21.02.2024
made in C.M.P.(MD).No.
1126 of 2012 in CRPPD(MD)
No.851 of 2020

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India challenging the order dated 07.08.2020 made in I.A.No.178 of 2012 in A.S.No.131 of 2007 on the file of the Principal Sub Court, Dindigul.

For Petitioner : Mr.R.G.Shankar Ganesan

ORDER

This Civil Revision Petition is filed against the order passed in I.A.No.178 of 2012 in A.S.No.131 of 2007 dated 07.08.2020 on the file of the learned Sub-Ordinate Judge, Dindigul. The said application was filed under Or.26, R.9 of C.P.C seeking appointment of an Advocate Commissioner to inspect the third item of the suit property to note down the physical features, measure the same and ascertain the encroachments. The said application was dismissed by the Lower Appellate Court and aggrieved by the same, the present Civil Revision Petition is filed.



C.R.P.PD(MD)No.851 of 2020

WEB COPY

2. The petitioner herein is the plaintiff who filed a suit for declaration and injunction in respect of four items of the suit scheduled property. Out of the same, the suit was decreed in favour of the petitioner in respect of 1,2 and 4 items, where as the suit was dismissed in respect of item No.3. During the pendency of the suit, an Advocate Commissioner was appointed in I.A.No.49 of 2005 in O.S.No.563 of 2002 for the purpose of the measurement of the suit property and for recording the physical features and the said report is already on record and subsequently once again an Advocate Commissioner was appointed at the instance of the respondent herein. The Advocate Commissioner had inspected the suit property once again in the presence of the parties on 26.06.2005 and filed a report in the suit. The petitioner herein having lost the suit property in respect of item No.3 of the suit scheduled properties filed A.S.No.131 of 2007 before the Lower Appellate Court and in the said Appeal Suit an application in I.A.No.26 of 2011 was filed seeking appointment of an Advocate Commissioner for inspection of the suit property. The said application was dismissed by the Lower Appellate Court by order dated 11.07.2012 as the scope of inspection sought had already been complied with in the earlier inspection. Inspite of the



C.R.P.PD(MD)No.851 of 2020

WEB COPY
said order passed in I.A.No.26 of 2011 has become final as no revision is preferred against the said order dated 11.07.2012. While things stood thus, the present I.A.No.178 of 2012 was filed seeking appointment of Advocate Commissioner for the properties noted above, the only reason stated in the affidavit filed in support of the application is that the respondents have encroached into the item No.3 of the suit property during the pendency of the Second Appeal and made certain constructions. As the application filed by the petitioner on an earlier occasion in I.A.No.26 of 2011 was already dismissed on 11.07.2012 for the same relief, the question of entertaining another application for the same relief does not arise.

3. From the materials on record, it is noticed though an ad-inerim injunction was passed in favour of the petitioner herein, the same was dissolved subsequently and no injunction is in favour of the petitioner on the date of filing the application for appointment of Advocate Commissioner. As the suit was filed for declaration of title and injunction and the appeal is being continued for the same relief in respect of item No.3 of the suit scheduled property, even assuming that the respondents have made certain



C.R.PD(MD)No.851 of 2020

WEB COPY constructions in the item No.3 of the suit scheduled property, the said fact even if true is totally an irrelevant factor for deciding the appeal which is pending before the Lower Appellate Court.

In the light of the above reasons and also the reasons assigned under the order in Revision, this Court does not find any merits in the Civil Revision Petition and the same is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

21.02.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes
kpr

To

The Principal Sub Judge, Dindigul.



WEB COPY



C.R.P.PD(MD)No.851 of 2020

MUMMINENI SUDHEER KUMAR, J.

kpr

C.R.P.PD(MD)No.851 of 2020
&
C.M.P.(MD).No.5678 of 2020

21.02.2024