



C.R.P.No.1914 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2025

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.No.1914 of 2023

C.M.P.No.12151 of 2023

1.Anbzhagan

2.Rekha

3.Paappi

4.Jeyaraman

5.Chandra ...Petitioners

Vs

1.Saravanan

2.Yashodha ...Respondents

PRAYER :- Civil Revision Petition is filed under Article 227 of the Constitution of India, pleaded to set aside the fair and decreetal order dated the 24.02.2023 passed in I.A.No.245 of 2020 in O.S.No.124 of 2020 on the file of the District Munsif Court, Polur, Tiruvannamalai .
District.

For Petitioners : Mr.L.Ramanathan

For Respondents : Mr.V.R.Appaswamee



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ORDER

Aggrieved by the order of the learned District Munsif, Polur, appointing an Advocate Commissioner in a suit of bare injunction, the defendants are before this Court.

2.The respondents/plaintiffs had filed O.S.No.124 of 2020 on the file of the learned District Munsif, Polur, seeking permanent injunction against them. This suit has been filed just to drag on the proceedings. Since the petitioners herein/defendants had already filed a suit for declaration and injunction in O.S.No.314 of 2020 on the file of Subordinate Court, Aarani. This suit has been transferred to the Subordinate Court, Polur, and renumbered as O.S.No.664 of 2022 and the same is pending adjudication. The petitioners/defendants would contend that the properties situate at Kangai Sudamani Village, Chetpet Taluk, comprised in Survey No.144/4 measuring 972 sqft and another extent of 2340 sqft along with super structure measuring 899 sqft in S.No.144/4 and 1482 sqft in S.No.144/4 belongs to the first petitioner who had purchased the same under a sale deed dated 11.11.1991 and 14.03.2011. These properties are situate adjacent to each other. It is the third



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petitioner who is in absolute possession and enjoyment of the same.

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4. While so, the respondents 1 to 6 obtained patta in their name in respect of the property. Immediately petitioners had given a representation to the Thasildar and Revenue Divisional Officer to cancel the patta and the same is pending. On the strength of the said patta, respondents 1 to 6 are attempting to encroach into the property and disturb the petitioner's possession. Therefore, the petitioners had filed the suit O.S.No.314 of 2020 on the file of the Subordinate Court, Aarani, for declaration and enjoyment which has been transferred to the file of the Subordinate Court, Polur, and re-numbered as O.S.No.664 of 2022.

5. The respondents in turn had filed O.S.No.124 of 2020 which is the subject matter of this Civil Revision Petition for a bare injunction. In



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the said suit, the petitioners have taken out an application for appointment of an Advocate Commissioner. The learned District Munsif, Polur, by order dated 24.02.2023 was pleased to allow the same. The learned Judge has proceeded to allow the application and appointed an Advocate Commissioner stating that there is a dispute with reference to the measurement of item Nos.1 and 2 and since the dispute was with reference to the measurements, the learned Judge held that an Advocate Commissioner should be appointed. Challenging the same, the petitioners are before this Court.

6.Heard the learned counsels on either side and perused the records.

7.The suit is one for a bare injunction where the petitioners claims that they are in possession and enjoyment of the suit property and the respondents also stake a claim to the same. The service of Advocate Commissioner cannot be taken for the purpose of gathering evidence. It is for the plaintiffs/respondents to prove through other evidence that he is in possession and enjoyment of the suit property. The very reasoning of the learned Judge for allowing the application that dispute between the



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parties are with reference to the measurements and therefore,

Commissioner has to be appointed cannot be countenanced. Both of them are claiming to be in possession of the property on the basis of title documents. Each of them states that they are in possession of the property on the basis of their respective title deeds and in these circumstances there is no necessity for appointing an Advocate Commissioner to measure the property. The suits are not for a declaration. Therefore, the order appointing an Advocate Commissioner has to be set aside and is accordingly set aside.

8. Therefore, this Civil Revision Petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
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To

The District Munsif Court, Polur, Tiruvannamalai.



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