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C.R.P.No.5303 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2025

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.5303 of 2024 &
CMP.No.29546 of 2024

K.Thillaivendan

.. Petitioner

Versus

P.Rajendran

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final order dated 18.10.2024 made in I.A.No.5 of 2024 in O.S.No.188 of 2024 on the file of the Principal District Munsif, Salem.

For Petitioner : Mr.S.Kousik

For Respondent : Mr.J.Ram

ORDER

The civil revision petition challenges the order of the learned Principal District Munsif at Salem in I.A.No.5 of 2024 in O.S.No.188 of 2024.



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2. O.S.No.188 of 2024 is a suit for bare injunction with respect to the two schedule mentioned properties. According to the plaintiff, his father had purchased the property in the year 1974. On his death, on 07.02.2019, the plaintiff and his brother succeeded to the estate. Thereafter, the plaintiff's brother executed a relinquishment deed in his favour on 14.10.2020. Hence, the plaintiff became the absolute owner of the suit properties.

3. The plaintiff claimed that the first defendant is a powerful politician, who is having influence with the Police. He had instigated the second defendant and both the defendants started interfering with the peaceful possession and enjoyment of the plaintiff. Hence, the suit.

4. The first defendant entered appearance. He took out an application for appointment of an Advocate Commissioner to note down the physical feature of the suit schedule mentioned properties and to submit a report to the court. The plea of the defendant is that the plaintiff's property is situated on the northern side and the property of the second defendant is situation on the southern side and further south to the property of the second defendant is the property of the first defendant. He pleaded that the plaintiff does not



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have any title beyond the southern side of his property as given in his deed.

Hence, he sought for appointment of an Advocate Commissioner.

5. The plaintiff filed a counter to the same. He pleaded that as the first defendant has not shown any right, title, or interest over the suit schedule mentioned property, he is not entitled to seek for appointment of an Advocate Commissioner. He also gave a gratuitous advice to the first defendant to file a suit for title over the suit property and thereafter, take out an application for appointment of Commissioner.

6. The learned Trial Judge, after considering the affidavit and counter, allowed the application. Hence, this revision.

7. I heard Mr.S.Kousik for the civil revision petitioner and Mr.J.Ram for the respondent.

8. Both the counsels reiterated the submissions that were made before the court below.

9. The plaintiff has given two schedules in the plaint. According to the first defendant, he is not claiming right over this schedule, but would



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want to point out that his property is situated on the southern side of the plaintiff's property. The issue is not over the agricultural land, but over the properly constructed buildings. If an Advocate Commissioner were to visit the properties and submit the report as regards the identity of the properties, it would help the learned Judge to give a finding in the suit.

10. In any event, appointment of an Advocate Commissioner is a discretionary order exercised by the learned Trial Judge. The learned Trial Judge has felt that, in case, the Advocate Commissioner visits the property, it will assist her in rendering a just judgment. Unless and until the view taken by the learned Trial Judge is perverse or contrary to law, the same is normally not be interfered with by this court in revision.

11. In the light of the above discussion, I do not find any reason to interfere with. This civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

09.01.2025

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Index : yes/no



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Speaking order/Non-speaking order
Neutral Citation : yes/no

To

The Principal District Munsif, Salem.



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V.LAKSHMINARAYANAN, J.

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