



CRP(MD).No.2582 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2023

CORAM

THE HON'BLE MR.JUSTICE **C.KUMARAPPAN**

CRP(MD).No.2582 of 2018 and
CMP(MD).No.11356 of 2018

1.Petchiammal
2.Shanmugam
3.Mookkammal

Petitioners

Vs.

1.Mariappan
2.Petchimuthu
3.Lakshmanan
4.K.Patchi
5.Vellaisamy

Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order in I.A.No.1052 of 2017 in O.S.No.222 of 2015, dated 09.07.2018 on the file of the Principal District Munsif Court, Thoothukudi.

For Petitioners : Mr.R. Ponkarthikeyan

For Respondent : No appearance
for Mr. C. Godwin



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ORDER

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This Civil Revision Petition has been filed against the fair and decreetal order, dated 09.07.2018 made in I.A.No.1052 of 2017 in O.S.No. 222 of 2015, on the file of the Principal District Munsif Court, Thoothukudi.

2. The plaintiffs are the petitioners herein as well as before the trial Court. It appears that the plaintiffs have filed a suit for permanent injunction. However, in the prayer under the guise of permanent injunction, the plaintiffs sought for the relief of mandatory injunction. According to the plaintiffs, the defendants who are the respondents herein have encroached upon the suit property to an extent of 5 Feet.

3. For the sake of convenience, the parties will be referred as per the litigative status before the trial Court.

4. It appears that when the suit was posted for arguments, the petitioner has filed an application for appointment of an Advocate Commissioner, in which, they have stated that, if the commissioner is



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appointed then it would serve easier to find out in whose possession and whose ownership the property is lying. However, that application was resisted by the respondents. When the plaintiffs come forward with a relief of permanent injunction, it is for them to prove the possession through relevant documents. However, in the instant case the petitioner wants to prove the possession through the appointment of an Advocate Commissioner.

5. Considering the submissions made by the counsels on either side the learned Trial Judge has rejected the application for appointment of an Advocate Commissioner on the ground that the very application has been filed to delay the proceedings and has been filed only when the case was posted for filing written arguments. Aggrieved by the said order, the petitioners have come forward with the present revision.

6. The learned counsel appearing for the petitioners would vehemently submit that if the Commissioner is appointed, the same would obviate much oral evidence. He would further submit that by appointing the Advocate Commissioner, no one would become prejudiced. Hence, prayed to allow this revision petition.



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7. Though the names of the respondents printed in the cause list, no one have appeared.

8. I have given my anxious consideration to the submissions of the learned counsel appearing for the petitioner and perused the materials available on record.

9. At the first instance, this Court would like to refer to the affidavit of the petitioners filed before the trial Court, wherein, he has stated in para No.,2 as follows:

□2. அசல் வழக்கில் பிரதிவாதிகளுக்கு எதிராக விளம்புகை பரிகாரம் கோரி தாக்கல் செய்துள்ளோம். இந்நிலையில் வழக்கு தபசில் குறித்து கனம் நீதிமன்றம் ஒரு ஆணையரை நியமித்து அளவீடு செய்தால் தான் ஹைதர தபசில் சொத்து யாருக்கு பாத்தியப்பட்டது என்றும், யார் அனுபவத்தில் இருந்து வருகின்றது என்பது தெளிவாக துலங்கும். ஏனவே மனு தபசில் சொத்தை அளவீடு செய்து அறிக்கை தாக்கல் செய்ய நீதிமன்ற ஆணையர் ஒருவரை நியமனம் செய்ய வேண்டியது நீதியின் பொருட்டு நியாயமாயும் அவசியமாயும் உள்ளது.□



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9. The mere perusal of the averments of the affidavit it is clear that the petitioners wanted to have a commission only to prove the possession and ownership which cannot be appointed for the above reasons.

10. It is pertinent to note that even in the plaint itself, the plaintiffs have mentioned that there was an encroachment to the extent of 5 feet. Therefore, as rightly submitted by the learned Trial Judge, at the stage when the matter is posted for 5th respondent's written arguments, the very filing of Commission petition is only to delay the proceedings is highly justifiable.

11. Therefore, this Court does not find any infirmity in the order passed by the trial Court and accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

24.07.2023

Index : Yes / No
Internet : Yes / No
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To

The Principal District Munsif Court, Thoothukudi.



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C.KUMARAPPAN, J.,

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