



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19/1/2015

C O R A M

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD(MD) No.1046 of 2014
and MP(MD)No.1 of 2014

1. Devasundaram
2. Jeyasingh
3. Evelyn Suguna

...Petitioners

Vs.

S. Prabhakaran

...Respondent

Petition filed under Article 227 of the Constitution of India against the impugned fair and decreetal order dated 24/1/2014 made in I.A.No.342 of 2013 in O.S.No.376 of 2011 on the file of II Additional District Munsif, Nagercoil.

For petitioners

... Mr.A.Rajkumarsen

For respondent

... Mr.I.Robert Chandrakumar

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O R D E R

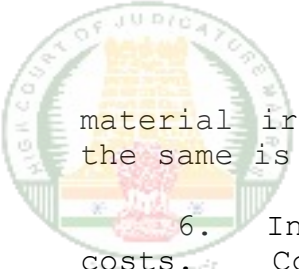
This Civil Revision Petition is filed by the defendants 1 to 3 challenging the dismissal of the appointment of the Commissioner in a suit for bare injunction.

2. The contention of the petitioners/defendants is that a wall lying on the northern side of the plaint schedule property belong to him. Therefore, to find out the pathway, it is necessary for the appointment of the Commissioner to note down the physical features. The defendants also claimed the title of easement which they cannot establish in a suit for permanent injunction filed by the plaintiff.

3. The trial Court has got a discretion to appoint a Commissioner or not under Order 26 Rule 9 of the Code of Civil Procedure. The Court is not bound to do so in every case. In a suit for bare injunction, only factum of the possession need to be proved. Therefore, there is no necessary for appointing the Commissioner to find out the factum of possession.

4. However, in this case, the defendants had taken out an application to prove their right of easement in the suit property. The defendants cannot establish their right of easement in the suit for injunction filed by the plaintiff without any pleading to the same effect. So far as the title and the identification of the property is concerned, it is found that there is no dispute regarding the same between the parties. It is for the parties to establish their possession by means of other evidence. The Commissioner cannot be appointed to gather evidence to strengthen their case.

5. In view of the above stated circumstances, the trial Court was right in dismissing the application as the Commissioner cannot be appointed for the purpose of elucidating any matter. I find no



material irregularity in the above order passed by the trial Court and the same is confirmed.

6. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(CO)
/True copy/

Sub Assistant Registrar

To
The II Additional District Munsif, Nagercoil.

+1CC to M/s.A.Rajkumar sen, Advocate in SR.2233
+1CC to M/s.I.Rober Chandrakumar, Advocate in SR.2300

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mvs
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