



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.04.2015

CORAM :

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN

C.R.P.PD. (MD) .No.331 of 2015

and

M.P. (MD) No.1 of 2015

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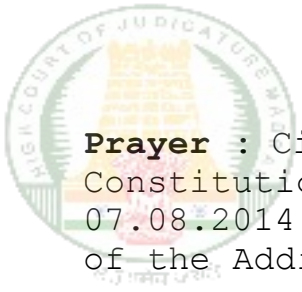
Antony Muthu

... Petitioner/Petitioner/Plaintiff

Vs.

1. Beno Roache
2. St. Joseph Leprosy Home,
Arockiapuram, Tuticorin
Through its Mother Superior
3. Selvakumar
4. Sankarraaj
5. Subbulakshmi
6. Manthira Moorthy
7. Saraswathy
8. Subramaniyan
9. Selvaraman
10. Petchimuthu
11. Vion Michael Jegarthesh
12. Jon Selin
13. Joyselin
14. Farooq
15. Alexander Fernando
16. Muthu Krishnan
17. Balasubramaniyan
18. Ajitha
19. Saravanakumar
20. Mariappan Chettiyar
21. Paneer Selvam
22. Saikumar
23. Roselin Shanthi
24. Jeyaram
25. Kumaravel
26. Priya
27. Vijaya Ragavan
28. Gilda
29. Anthony Xavier
30. Veerammal
31. Arumuga Nainar
32. Swetha
33. Anthony Raj
34. Larisa Vasanthi
35. Mariappan

... Respondents/Respondents/Defendants



Prayer : Civil Revision Petition under Article 227 of the Constitution of India, against the fair and decretal order dated 07.08.2014 in I.A.No.206 of 2014 in O.S.No.191 of 2010 on the file of the Additional District Munsif, Thoothukudi.

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For Petitioner : Mr.G.Prabhu Rajadurai

ORDER

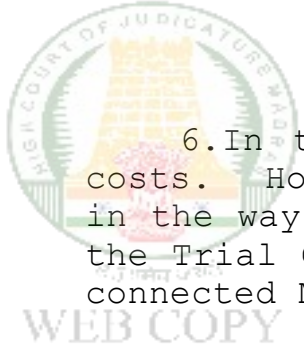
The petitioner filed a suit in O.S.No.191 of 2010 for declaration and injunction before the learned Additional District Munsif, Tuticorin. The suit was filed in 2010. The respondent filed written statement and contested the suit. The suit was posted for trial. The petitioner at that point of that time filed an application in I.A.No206 of 2014, for issuance of a commission to inspect the property and submit a report. The interlocutory application was dismissed by the learned Trial Judge on the ground that his intention was only to prove possession and to collect evidence through Advocate Commissioner. Feeling aggrieved by the said order, the petitioner is before this Court.

2.The learned counsel for the petitioner contended that the petitioner should establish his case and it was only for the said purpose, he sought appointment of an Advocate Commissioner. According to the learned counsel, the respondent made an encroachment and the same is required to be proved by taking the assistance of a Commissioner.

3.The affidavit filed in support of the interlocutory application in I.A.No.206 of 2014 shows that the petitioner wanted the appointment of Advocate Commissioner to note down physical features, to survey the land and to establish his plea before the Trial Court.

4.The suit was filed in 2010. Nothing prevented the petitioner from taking steps to get the appointment of an Advocate Commissioner at the earliest point of time, in case there is a serious dispute with respect to the identity of property.

5.The factual matrix does not contain any material with regard to a dispute to the identity. In a suit for recovery of possession, the plaintiff should establish his case by producing documentary evidence. There is no question of proving his possession by issuing a commission. The learned Trial Judge was therefore perfectly correct in rejecting the application. I do not find any error or illegality in the said order warranting interference by exercising the jurisdiction under Article 227 of the Constitution of India.



6. In the upshot, I dismiss the Civil Revision Petition. No costs. However, I make it clear that this order would not stand in the way of the petitioner producing acceptable materials before the Trial Court to substantiate his case on merits. Consequently, connected M.P.(MD) No.1 of 2015 is closed.

Sd/-

Assistant Registrar(A.S.,)

/True Copy/

Sub-Assistant Registrar

To

The Additional District Munsif, Thoothukudi.

+1cc to Mr.G.Prabhu Rajadurai, Advocate, in SR. No.17115.

C.R.P.PD.(MD) .No.331 of 2015
and M.P.(MD) No.1 of 2015
06.04.2015

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