



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27/1/2015

C O R A M

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.R.P. (NPD) (MD) Nos.63 and 64 of 2015

1. D. Maheswaran
2. P. Easwari
3. S. Sudha
4. M. Rajeswari
5. R. Paraman

... Petitioners in both CRP.

Vs

G. Venkatesan ... Respondent in CRP NPD (MD) No.63/2015
S.Chellan ... Respondent in CRP NPD (MD) No.64/2015

PRAYER IN C.R.P. (MD) No.63 of 2015: Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order made in I.A.No.456 of 2013 in O.S.No.594 of 2013 on the file of the Additional District Munsif Court, Madurai Town, Madurai dated 6/12/2013.

PRAYER IN C.R.P. (MD) No.64 of 2015: Petition filed under Article 227 of the Constitution of India to set aside the fair and ex-order made in I.A.No.520 of 2013 in O.S.No.596 of 2013 on the file of the Additional District Munsif Court, Madurai Town, Madurai.

For Petitioners: Mr.T.K.Gopalan

C O M M O N O R D E R

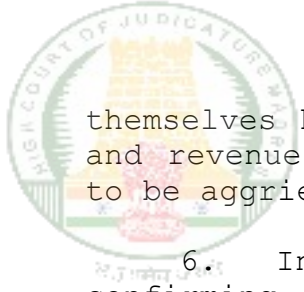
Both the revisions are filed against the order refusing to appoint the Commissioner to note down the physical features of the suit property.

2. The said applications are taken by the defendants in the respective suits. Admittedly, the suits are for relief of permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the plaintiff in the suit property. The trial Court dismissed the applications refusing to appoint the Commissioner in a suit for a bare injunction. The said order is being challenged in the revisions.

3. Heard the learned counsel for the petitioners.

4. It is contended by the learned counsel for the petitioners that the order of the District Munsif is wrong in as much as holding that the defendants cannot file an application for appointing the Commissioner even before filing the written statement and pressed into service the decision reported in {2000 (1) CC 279} PILLAIYAR Vs. GANESAN AND ANOTHER.

5. No doubt, the trial Court has got the discretion to appoint the Commissioner or not, but the Court is not bound to do so in every suit. This suit one being for a bare injunction, only the factum of possession has been gone into. Normally, the object of the local investigation under Order 26 Rule 9 of the Code of Civil Procedure is not to collect evidence. The trial Judge also had found that the petitioners/defendants



themselves had measured the property on 15/6/2013, as per the sale deeds and revenue records. Therefore, there is no reason for the petitioners to be aggrieved by the order of the Additional District Munsif, Madurai.

6. In the result, these Civil Revision Petitions are dismissed, confirming the orders of the Additional District Munsif, Madurai. No costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar (Per Admn)

/True copy/

Sub Assistant Registrar

To

The Additional District Munsif, Madurai Town, Madurai.

+1cc to MR.T.K.GOPALAN, ADVOCATE IN SR : 3534

Mvs

SR : 23.02.2015 : 2p/3c

C.R.P (MD) Nos.63 and 64 of 2015
27.01.2015