



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.03.2015

CORAM:

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.R.P. (MD) .No.675 of 2015 (PD)

and

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

1.D.Boopathy
2.D.Arivalagan

... Revision Petitioners
/Respondent/ Plaintiffs

vs.

1.Pappayee
2.P.Pitchaimuthu
3.P.Velusamy

... Respondents/Petitioners/Defendant

PRAYER: This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.163 of 2015 in O.S.No.14 of 2015 dated 13.03.2015 on the file of the Additional District Munsif, Karur.

For Petitioner : Mr.B.Saravanan

For Respondents : Mr.Raguvaran Gopalan

O R D E R

The plaintiff in the suit for bare injunction has filed the revision against the order appointing an Advocate Commissioner at the instance of the defendant.

2.The above said suit in an earlier round of litigation had come up to this Court and the claim of the respondent was rejected. However, it is submitted by the learned counsel for the respondent that Special Leave Petition was filed against the same and it is pending before the Honourable Supreme Court.

3.In the meanwhile, I.A.No.163 of 2015 is filed by the defendant for the purpose of appointing an Advocate Commissioner to note down the physical features and submit his report. Accordingly, an application was filed and it was also allowed by the trial Court.

4.The clear contention of the defendant is that the plaintiff was never in the possession of the property. However, after obtaining an order of injunction, he has been disturbing the possession of the defendant. The defendant contended that they are in possession of the property and they are growing drumstick trees and cultivating other crops by drip irrigation method. However, the contention is that the suit lands are not fallow lands, but they are irrigated by drip irrigation method.



5.It is well settled principle that the commissioner cannot be appointed for the purpose of gathering evidence. It is the case of the plaintiff that he has been in the possession of the property in his own capacity and the lands are dry lands and could not be cultivated, whereas the defendant has contended that they have been putting the suit property into the proper use and they are growing drumstick trees and other crops. The said contention of both sides, have to be proved only by adducing proper evidence before the Court in the manner known to law and not by appointing the commissioner to gather the evidence and establish their case. Therefore, the trial Court had erroneously appointed the commissioner for this purpose, which is under challenge. When the suit is filed by the plaintiff for bare injunction, the burden is on him to establish his case, by way of letting in oral and documentary evidence. In a suit for bare injunction, the commissioner cannot be appointed to establish the factum of possession. Already there was a dispute between the same parties with regard to the same subject matter. While so, the defendant need not be concerned about the plaintiff establishing his case of possession, when the burden is on the plaintiff. Therefore, the District Munsif Court is wrong in allowing the application for appointing the commissioner to find out the factum of possession or even to note down the physical features, which will not in any way be useful for the final adjudication of the matter between the parties.

6.In the result, the order of the Additional District Munsif, Karur made in I.A.No.163 of 2015 in O.S.No.14 of 2015 dated 13.03.2015 is set aside and the civil revision petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/
Assistant Registrar

/True copy/

sub Assistant Registrar(c.s)

To
The Additional District Munsif, Karur.

+1cc to M/S. E.K.Kumaresan, Advocate in SR.No. 15891

+1cc to M/S. K.Prabhakar, Advocate in SR.No. 16715

TS/16.04.2015/2P-4C

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