



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2016

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CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.1938 of 2016 (PD)

and

CMP (MD) No. 9180 of 2016

Sriram Nallamani Yadava Educational Society,
through its Chairman,
Manimaran
S/o.Nallamani Konar,
Andaman Village,
Kanjarampettai Post,
Madurai District.

....Petitioner/Respondent/Defendent

Vs.

N.S. Akbar Ali

....Respondent/petitioner/plaintiff

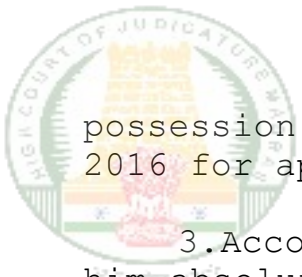
PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the Order dated 28.04.2016 in I.A. No. 722 of 2016 in OS No. 193 of 2016 on the file of the Principal District Munsif Court, Tenkasi.

For Petitioner : Mr.I.Robert Chandrakumar
For Respondent : Mr.A. Arumugam
for Ajmal Associates

ORDER

The petitioner has filed this Civil Revision Petition to set aside the Order, dated 28.04.2016 in I.A. No. 722 of 2016 in OS No. 193 of 2016 passed by the Principal District Munsif, Tenkasi.

2.The petitioner is the defendant in O.S.No.193 of 2016. The respondent is the plaintiff in the suit. The respondent filed the suit in O.S.No.193 of 2016 for declaration and recovery of



possession. The respondent, along with suit, filed I.A.No.722 of 2016 for appointment of Advocate Commissioner.

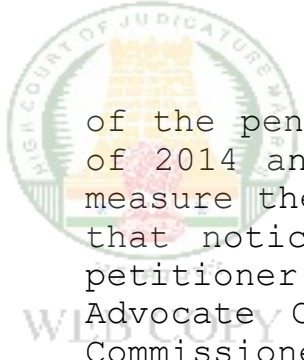
3. According to the respondent, the suit property belongs to him absolutely and the petitioner, who is running a College in the adjacent land, wanted the respondent to sell the suit property for meagre amount. When the respondent refused to sell the property, the petitioner encroached the suit land and put up the construction. The respondent issued notice, dated 26.03.2014 to the petitioner. The petitioner did not send any reply to the respondent. Therefore, the respondent gave a complaint before the Inspector of Police, Ilathoor Police Station on 03.04.2014. The representative of the petitioner appeared before the Ilathoor Police Station for enquiry and gave a statement that the property can be measured by the surveyor and if there is any encroachment by the petitioner, the same would be removed by the petitioner. The respondent took steps to measure the properties with the help of surveyor and at that time, the petitioner filed the suits in O.S.No.190 of 2014 and O.S.No.632 of 2014 against the respondent. In view of the pendency of the suit, the surveyor did not inspect the property and measure the same. Therefore, the respondent filed O.S.No.193 of 2016 for declaration and recovery of possession and I.A.No.722 of 2016 for appointment of Advocate Commissioner.

4. The learned Judge by the order, dated 28.04.2016 appointed an Advocate Commissioner to execute the warrant and inspect the property after issuing notice to both parties with the help of surveyor.

5. Against the said order, dated 28.04.2016, the present Civil Revision Petition has been filed by the petitioner.

5. The learned counsel for the petitioner submitted that the Principal District Munsif, Tenkasi failed to consider the two suits filed by the petitioner in O.S.No.190 of 2014 and O.S.No.632 of 2014 with regard to same property, which are pending in the same Court. The learned Judge failed to see that there is no urgency for appointment of Advocate Commissioner without notice to the petitioner and without giving opportunity to the petitioner. The learned Judge failed to see that the petitioner and his predecessor in title are in possession of the property from the year 1994 onwards. The appointment of Advocate Commissioner is a discretionary relief and Commissioner can be appointed only after hearing the objection by the petitioner.

6. Per contra, the learned counsel for the respondent submitted that the respondent issued notice, dated 26.03.2014 when his property was encroached by the petitioner. The petitioner did not send any reply, therefore, the respondent gave a complaint against the petitioner on 03.04.2014 before the Ilathoor Police Station. The representative of the petitioner appeared before the police station and accepted for measurement of the property by the surveyor and agreed to remove the encroachment if any. In view



of the pendency of the suit filed by the petitioner in O.S.No.190 of 2014 and O.S.No.632 of 2014, the surveyor did not inspect and measure the property. The learned Judge has taken note of the fact that notice was issued to the petitioner by the respondent and petitioner did not send any reply and then only appointed the Advocate Commissioner. The learned Judge directed the Advocate Commissioner to inspect the property, after issuing notice to both parties.

7.In support of his case, the learned counsel for the respondent relied on the following judgment reported in **(2007) 7 Supreme Court Cases 529 (Aligarh Muslim University v. Mansoor Ali Khan)** and submitted that even if the Principles of Natural Justice are violated in passing of order, if no prejudice is caused to the other party, the said order need not be set aside.

8.I have heard the learned counsel appearing for the petitioner and also perused the entire materials on record.

9.The respondent in the affidavit filed in support of the petition for appointment of Advocate Commissioner has specifically stated that he issued notice to the petitioner and the petitioner after receiving notice did not send any reply. He also stated that during enquiry before the police station, the representative of the petitioner agreed to measure the property with the help of surveyor and agreed to remove the encroachment if any found after such measurement by surveyor. The petitioner has not denied these averments in the grounds raised in the Civil Revision Petition.

10.The learned Judge has considered the averments made by the petitioner in proper perspective and appointed an Advocate as Commissioner to inspect the property and directed the Advocate Commissioner to issue notice to both parties and measure the property with the help of surveyor. The learned Judge has exercised his jurisdiction in proper perspective and has given cogent and valid reason. There is no illegality or irregularity warranting interference by this Court.

11.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(AS)

/True copy/



To

The Principal District Munsif,
Tenkasi.

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+1 cc To M/s.I.Robert Chandrakumar Advocate in Sr. no.80823
+1 cc To M/s. Ajmal Associates Advocate in Sr. no.80818.

Am

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