

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(PD) NO.2616 OF 2017
AND CMP NO.12502 OF 2017

1.Selvaraj
 2.Kalarani

... Petitioners

Vs.

1.Banumathi
 2.Rameshkumar
 3.Sivakumar
 4.Revathi

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 10.10.2011 in I.A.No.922 of 2011 in O.S.No.391 of 2011 on the file of the Principal District Munsif Court, Namakkal.

For Petitioners : Mr.S.Kalyanaraman

ORDER

This Civil Revision Petition is directed against the order dated 10.10.2011 dismissing the interlocutory application filed for appointment of Advocate Commissioner.

2. The petitioners are the defendants in the suit.

3. The respondents / plaintiffs have filed the suit for permanent injunction contending *inter alia* that they derived title to the suit property by way of an assignment made by the Government and it was converted into three shops and let out to three different persons. The petitioners / defendants demanded the respondents / plaintiffs to evict one of the tenants and let it over to them. Since the plaintiffs have refused to accede to the illegal demand, the petitioners / defendants are trying to forcibly occupy the shops belonging to the respondents / plaintiffs. Hence, they filed the suit.

4. Per contra, the petitioners / defendants would claim title to the suit property through a registered sale deed dated 02.01.2011. When they had taken steps to effect mutation of revenue records, it was found that patta was registered in the name of one Late Ganesan. The said Ganesan misusing his powers as Surveyor, has transferred the patta in his favour. The plaintiffs claim title through the revenue records namely "PATTA" and therefore, the respondents / plaintiffs are not entitled to possession.

5. With the above factual background, the interlocutory application under Order 26 Rule 9 of the Code of Civil Procedure was filed by the petitioners / defendants for appointment of Advocate Commissioner.

6. The suit is for bare injunction. The issue involved is as to who are all in possession of the property. In such a situation, appointment of Advocate Commissioner to find out the physical features is nothing but an attempt to find out the possession of the parties.

7. The learned counsel for the petitioners would contend that the suit property is a dwelling house.

8. On the other hand, the respondents / plaintiffs would contend that the suit properties are shops.

9. In such a situation, appointment of Advocate Commissioner to note down the physical features is nothing but an attempt to find out the possession of the property. The time taken for filing the above

application is also very belated, that is, after completing the trial, arguments were heard and the matter was posted for judgment. At that stage, the application for appointment of Advocate Commissioner came to be filed. The Trial Court, clearly found that the petitioners / defendants have clearly admitted that the respondents / plaintiffs are in possession. There is no contra evidence on this aspect. But the appointment of Advocate Commissioner is only to find out as to who are all in possession of the property. Therefore, the Trial Court has dismissed the above application for appointment of Advocate Commissioner, filed at the argument stage.

10. It is well settled that appointment of Advocate Commissioner is only to elucidate the facts and to aid the Court to arrive at a decision expeditiously and to save time. But, the present attempt of the petitioners is to find out as to who are all in possession and to protract the proceedings. The Trial Court has rightly dismissed the interlocutory application that appointment of Advocate Commissioner is not maintainable, for the purpose of finding out possession. Therefore, no interference is called for in the order passed by the Trial Court.

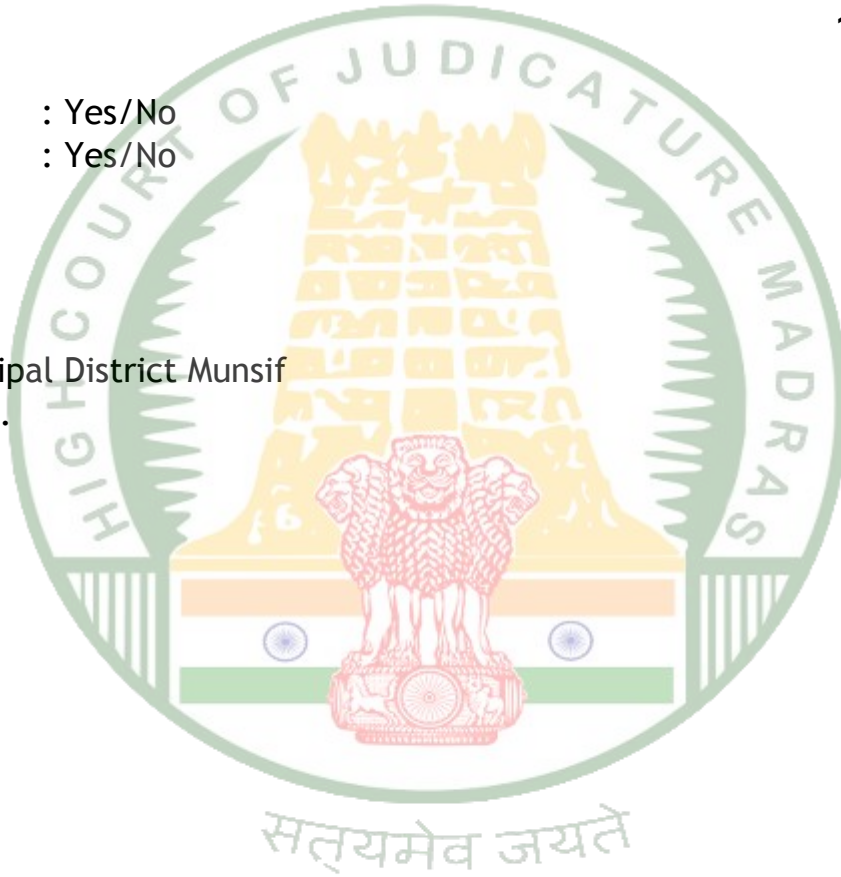
11. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

13.09.2017

Index : Yes/No
Internet : Yes/No
TK

To

The Principal District Munsif
Namakkal.



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M.GOVINDARAJ, J.

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