

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2017

CORAM:

**THE HONOURABLE Ms. JUSTICE V.M.VELUMANI**

**CRP(PD).No.999 of 2017**

**and**

**CMP.No.4885 of 2017**

R.Raghuraman

..Petitioner

..Vs..

1.Balambal

2.Dhanalakshmi

3.Dhayanithi

4.Thambidurai

5.Valarmathi

6.Kamalam

7.Padmavathi

...Respondent

**Prayer:-** Civil Revision Petition is filed under Article 227 of the Constitution of India against the Fair and Decretal order of dismissing the Advocate Commissioner Application in I.A.No.116 of 2016 in O.S.No.304 of 2014 dated 10.01.2017 passed by the learned 1<sup>st</sup> Additional Subordinate Judge, Villupuram.

For Petitioner : Mr.A.Rajesh Kannan

**ORDER**

Civil Revision Petition has been filed against the Fair and Decretal order of dismissing the Advocate Commissioner Application in I.A.No.116 of 2016 in O.S.No.304 of 2014 dated 10.01.2017 passed by the learned 1<sup>st</sup> Additional Subordinate Judge, Villupuram.

2. The petitioner is the plaintiff and respondents are the defendants

in O.S.No.304 of 2014. The petitioner filed a suit for permanent injunction restraining the respondents/defendants, their men, agents, servants, administrators or any one acting on behalf of him from interfering or disturbing or encumbering the petitioner's peaceful possession and enjoyment of the suit schedule of property.

3. The respondents filed a written statement and are contesting the suit. Along with suit, petitioner also filed an application in I.A.No.749 of 2014 for interim injunction. Initially, injunction was granted. Subsequently, on contest, the same was dismissed.

4. The petitioner filed an application in I.A.No.116 of 2016 for appointment of an Advocate Commissioner. According to the petitioner, he is in possession and enjoyment of the suit property and he has planted guava and Eucalyptus. These averments are denied by the respondent and stated that in the suit for injunction, it is for the plaintiff/petitioner to prove his possession. The Advocate Commissioner cannot be appointed to find out the factum of the possession. The application for interim injunction pending suit was dismissed on contest.

5. The learned Trial Judge considered the averments in the affidavit and counter affidavit and the order passed in I.A.No.749 of 2014 for adinterim injunction has dismissed the application holding that the

petitioner has to prove his possession and enjoyment by acceptable evidence as the suit is for permanent injunction.

6. Against the order of dismissal dated 10.01.2017 in I.A.No.116 of 2016 in O.S.No.304 of 2014 passed by the learned 1<sup>st</sup> Additional Subordinate Judge, Villupuram, the present Civil Revision Petition is filed.

7. Petitioner has filed a suit for permanent injunction and pending suit, he has filed an application in I.A.No.749 of 2014 for temporary injunction. Subsequently, it was dismissed on 10.12.2015 on contest. The said order was not challenged further and it has become final. Subsequently, the petitioner filed the present application in I.A.No.116 of 2016 for appointment of an Advocate Commissioner to inspect the suit schedule of property and note down the physical features of the suit property along with the help of Taluk Surveyor and file the report before this Court.

8. Heard the learned counsel for the petitioner and perused the materials available on record.

9. From the materials on record, it is seen that there is no dispute with regard to the boundaries and extent and description of the property. It is well settled that in a suit for permanent injunction, it is for

the plaintiff to prove his possession and acceptable evidence to succeed in the suit. The Advocate Commissioner cannot be appointed to find out who is in possession of the suit property.

10. The learned Trial Judge has considered all the materials in proper perspective and dismissed the application by exercising his power conferred on him by giving cogent and valid reasons. There is no irregularity or illegality warranting interference by this Court with the order of the learned Trial Judge, dated 10.01.2017.

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

**14.06.2017**

gv/dh

Internet:Yes / No  
Speaking Order/Non Speaking Order

To

The 1<sup>st</sup> Additional Subordinate Court,  
Villupuram.

**V.M.VELUMANI, J.**

gv/dh

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