

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.92 of 2014
and M.P.No.1 of 2014

1.J.P.Kandasamy
2.P.Natarajan

.. Petitioners

Vs.

K.P.Arumugham

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 06.03.2013 made in I.A.No.251 of 2013 in O.S.No.57 of 2013 on the file of the Principal District Munsif Court, Bhavani.

For Petitioners : Mr.MA.P.Thangavel
For Respondent : No appearance

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 06.03.2013 made in I.A.No.251 of 2013 in O.S.No.57 of 2013 on the file of the Principal District Munsif Court, Bhavani.

2. The petitioners are plaintiffs and respondent is the 7th defendant in O.S.No.57 of 2013 on the file of the Principal District Munsif Court, Bhavani. The petitioners filed suit against the respondent and defendants 1 to 6 for permanent injunction restraining the respondent from interfering with the petitioners' peaceful possession and enjoyment of the suit property. Though the petitioners filed suit against all the defendants, the relief sought only against 7th defendant/respondent herein. The petitioners filed I.A.No.251 of 2013 under Order 26 Rule 9 and Section 151 C.P.C. only against respondent herein for appointment of Advocate Commissioner to note down the existing physical features in and around the suit property and to file his report and plan with specific reference to cut and removal of 20 coconut trees in the suit property.

3. According to the petitioners, they are lessees of the suit property from the year 1970 and they paid Rs.5,00,000/- to the defendants 1 to 6 as refundable advance and spent more than Rs.40,00,000/- for developing suit property. The defendants 1 to 6 tried to sell the property to third parties. In the circumstances, the petitioners filed O.S.No.151 of 2011 against the defendants 1 to 6.

Whiles, 7th defendant/respondent herein on 25.02.2013 trespassed into the suit property, cut and removed 20 coconut trees under the guise of agreement of sale that the defendants 1 to 6 threatened the petitioners to dispossess them. Hence, they filed the present suit. The respondent is trying to alter the physical features of the suit property illegally and therefore, appointment of Advocate Commissioner is necessary.

4. The respondent filed counter affidavit and denied all the averments made in the application. According to the respondent, the defendants 1 to 5 are owners of the property. Petitioners are only coolie workers in the land and they are not lessees at any point of time. The petitioners have already filed O.S.No.151 of 2011 against the defendants 1 to 5. In the said suit, they filed I.A.Nos.471 and 472 of 2011 for temporary injunction against the defendants 1 to 5 and appointment of Advocate Commissioner respectively. I.A.No.472 of 2011 for appointment of Advocate Commissioner was allowed and Advocate Commissioner was appointed. He inspected the suit property and filed a report. In I.A.No.471 of 2011, an interim injunction was granted in respect of the possession of the petitioners with regard to their residence and

dismissed I.A. with regard to other portion. Against the said order, the petitioners filed Civil Miscellaneous Appeal and the same was dismissed. In view of the fact that Advocate Commissioner was already appointed in I.A.No.472 of 2011 in O.S.No.151 of 2011, which was filed against the defendants 1 to 5 for injunction, the present application is hit by the principles of resjudicata and prayed for dismissal of the application.

5. Before the learned Judge, no oral evidence was let in by the parties and petitioner marked six documents as Exs.P1 to P6. The respondent marked three documents as Exs.R1 to R3.

6. The learned Judge considering the averments made in the affidavit, counter affidavit, materials available on record and documents relied on by the parties, dismissed the application holding that in a suit for injunction, appointment of Advocate Commissioner is not necessary.

7. Against the said order of dismissal dated 06.03.2013 made in I.A.No.251 of 2013, the present Civil Revision Petition is filed by the petitioner.

8. Though notice was served on the respondent and his name has been printed in the cause list, there is no representation on behalf of the respondent either in person or through counsel. Heard the learned counsel for the petitioner and perused the materials available on record.

9. The petitioners have filed present suit for injunction against the respondent and six others restraining the respondent from interfering with the petitioners' peaceful possession and enjoyment of the suit property. From the materials on record, it is seen that the petitioners earlier filed O.S.No.151 of 2011 against the defendants 1 to 5 for permanent injunction restraining them from alienating the suit property. In the said suit, on the application filed by the petitioners, Advocate Commissioner was appointed and he inspected the property and filed his report. In the present suit, again the petitioners have come out with the application for appointment of Advocate Commissioner to note down the existing physical features in and around the suit property, to file his report and plan with specific reference to cut and removal of 20 coconut trees in the suit property. During enquiry, the petitioners marked documents

including the report of the Advocate Commissioner filed in O.S.No.151 of 2011 and the same is on file.

10. Considering the above facts, as the relief sought for in the present suit is only for injunction against the respondent, the application for appointment of Advocate Commissioner is not maintainable and the same is devoid of merits. It is well settled that a party to the suit cannot seek appointment of Advocate Commissioner to inspect the suit property and file report with regard to possession of the property. It is for the plaintiffs to prove their possession by letting in evidence that the defendants are trying to interfere with their possession and to alter the physical features. In the circumstances, there is no irregularity or illegality warranting interference by this Court with the order of the learned Judge dated 06.03.2013.

11. In the result, the Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
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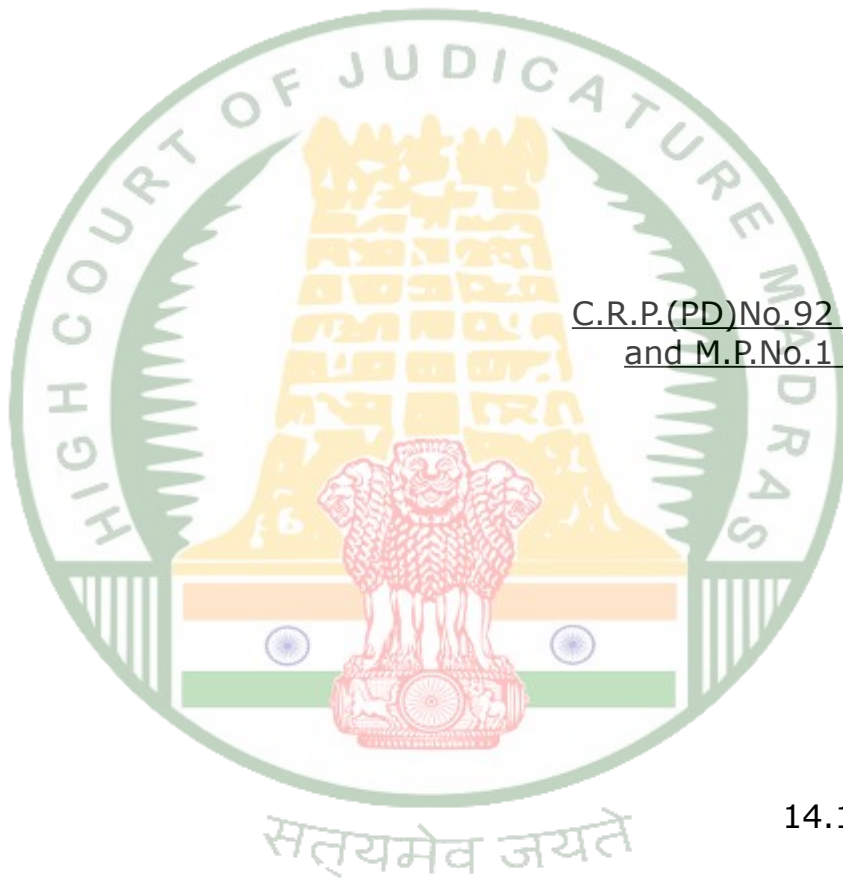
The Principal District Munsif, Bhavani.



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V.M.VELUMANI, J.

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