

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4819 of 2012
& M.P.No.1 of 2012

Mrs.S.Anuratha

...

Petitioner

Vs.

V.Amukutti

...

Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, against the order passed in I.A.No.511 of 2012 in O.S.No.84 of 2012 dated 07.07.2012 pending on the file of the Additional District Munsif, Alandur.

For Petitioner : Mr.S.Sathyaraj

For Respondent : Mr.V.Ramesh

ORDER

This Civil Revision Petition has been filed against the order passed in I.A.No.511 of 2012 in O.S.No.84 of 2012 dated 07.07.2012 pending on the file of the Additional District Munsif, Alandur.

2. The petitioner is the plaintiff and the respondent is the defendant. The petitioner filed suit for injunction against the respondent. The respondent filed written statement on 12.06.2012 and is contesting the suit. The respondent filed I.A.No.511 of 2012 for appointment of Advocate Commissioner to measure and identify the suit property and file report. According to the respondent, the suit property originally belonged to his father and he bequeathed the same to the mother of the respondent who in turn settled the property to the respondent. The petitioner, without having any valid title, filed the suit for injunction. The suit property consists of two properties and the description given by the petitioner is not proper and clarification is required with regard to the extent of property and prayed for appointment of Advocate Commissioner to measure the suit property. The petitioner filed counter and denied all the averments mentioned by the respondent and submitted that the

petitioner traced her title to the suit property by giving particulars. In the suit for bare injunction, appointment of Advocate Commissioner is not necessary. The learned Judge, considering the averments in the affidavit, counter affidavit and the materials available on record, allowed the application on the ground that the respondent has stated that clarification is required with regard to the property mentioned in the schedule to the plaint and therefore, appointment of Advocate Commissioner is necessary and plan & sketch to be filed by the Advocate Commissioner will assist the Court to decide the issue in the suit and will reduce the oral evidence by the parties.

3. Against the order dated 07.07.2012 passed in I.A.No.511 of 2012 in O.S.No.84 of 2012, the present Civil Revision Petition has been filed.

4. Heard the learned counsel for the petitioner as well as respondent and perused the materials available on record.

5. The petitioner has filed the suit for permanent injunction restraining the respondent and others claiming under him from

interfering with the right, title, peaceful possession, interest and enjoyment of the schedule mentioned property. In view of the above relief sought for by the petitioner, it is for the petitioner to prove the description of the property and her possession and enjoyment of the suit property. The reason given by the respondent for appointing Advocate Commissioner in order to clarify the description of the suit property is not a valid reason. The respondent has to prove that she is in possession and enjoyment of the suit property and the Advocate Commissioner, by filing report, cannot clarify the description of the suit property. The Advocate Commissioner cannot be appointed for collection of evidence. In view of the above circumstances, I hold that the learned Judge has not exercised the powers conferred on him properly in passing the order.

6. In the result, this Civil Revision Petition is allowed setting aside the order passed in I.A.No.511 of 2012 in O.S.No.84 of 2012 dated 07.07.2012. No costs. Consequently, connected Miscellaneous Petition is closed.

24.07.2017

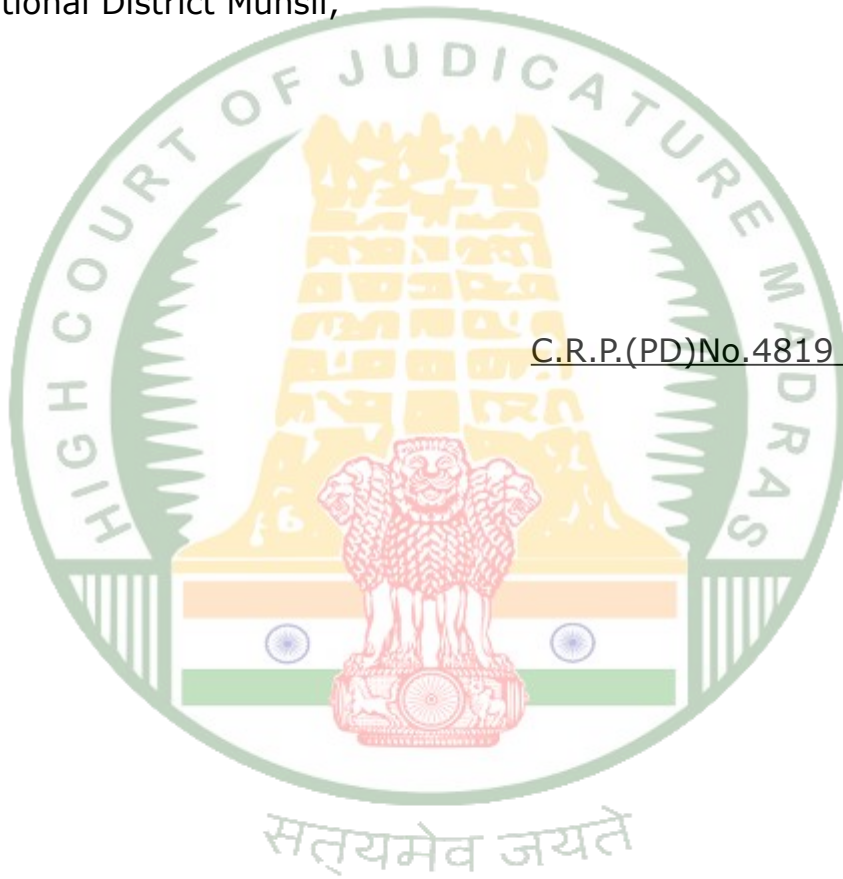
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V.M.VELUMANI, J.

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To

The Additional District Munsif,
Alandur.



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24.07.2017

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