



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.327 of 2017 (PD)

and

C.M.P(MD)No.1626 of 2017

Nallakannu

....Petitioner/Petitioner/Defendant

Vs.

S.Masanam

....Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in I.A.No.506 of 2015 in O.S.No.254 of 2015, dated 03.11.2016 on the file of I-Additional District Munsif Court, Tirunelveli by allowing this Civil Revision Petition.

For Petitioner : Mr.H.Arumugam

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair and decretal order passed in I.A.No.506 of 2015 in O.S.No.254 of 2015, dated 03.11.2016 by the learned I-Additional District Munsif, Tirunelveli.

2.The petitioner is the defendant and the respondent is the plaintiff. The respondent filed suit in O.S.No.254 of 2015 before the learned District Munsif, Tirunelveli for injunction restraining the petitioner from interfering with his peaceful possession and enjoyment of the suit property in Survey No.1644/1A2 measuring 30 cents and in Survey No.1644/2 measuring 1 acre in Seevalaperi Village. The petitioner filed written statement on 17.03.2016 and is contesting the suit. The petitioner stated that on the southern side of suit property, his property is in survey No.1653/1. The said property was in possession of his brother Murugan for more than 30 years. His brother executed a settlement deed, dated 01.06.2015 in favour of the petitioner and from that date, the petitioner is in possession and enjoyment of the property. According to the petitioner, the respondent with an intention to grab the property of the petitioner in Survey No.1644/1A2 and 1644/2 has filed a vexatious suit. Therefore, the petitioner filed I.A.No.506 of 2015 to appoint an Advocate Commissioner to note



down the measurements, physical features and lie and location of the schedule property and S.No.1653/1 of Seevalaperi Village with the help of the Taluk Surveyor and to submit a report with plan. The respondent opposed the said application.

3.The learned Judge considering the averments made in the plaint, written statement, affidavit and counter affidavit, dismissed the application holding that it is for the respondent to prove that he is in possession and enjoyment of the suit property in Survey No.1644/1A2 and survey No.1644/2.

4.Against the said order of dismissal made in I.A.No.506 of 2015, the petitioner has come out with the present Civil Revision Petition.

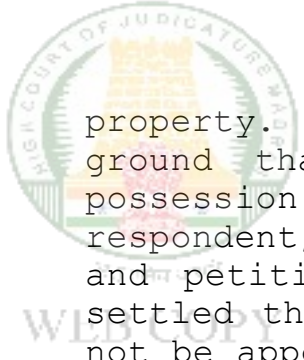
5.In support of his case, the learned counsel appearing for the petitioner relied on the judgement reported in 2014(5) CTC 85 (Anwar Batcha and another vs. S.Mahuedoom) wherein at paragraphs 12 & 13 held as follows:-

"12.The object of Order 26, Rule 9, C.P.C., is not to assist a party to collect evidence where it can get the evidence itself, but the real object is for elucidating any matter in dispute by local investigation at the spot.

13.In Payani Achuthan v.Chamballikundu Harijan Fisheries Development Co-operative Society, AIR 1996 Ker. 276, it has been held that the Court cannot prevent a party from adducing the best evidence, if such evidence can be gathered with the help of a Commissioner. Refusal of the request of the party to appoint a Commissioner under Order 26, Rule 9, C.P.C., to make a local investigation in an appropriate case amounts to failure of exercise of jurisdiction vested in it. In a Suit for injunction to restrain the Defendants from interfering with the possession due to alleged encroachment into the land of the Plaintiff, one of the methods to find out as to whether or not there is encroachment is to have the local investigation done by a competent Commissioner. Thus, in such a case Trial Court was not right in rejecting the prayer for appointment of Commissioner."

6.I have heard the learned counsel appearing for the petitioner and also perused all the materials available on record.

7.The grievance of the petitioner is that suit property is in Survey No.1644/1A2 and 1644/2 is different from the property which is in his possession in Survey No.1653/1. The property in Survey No.1653/1 which is in possession and enjoyment of the petitioner is on the northern side of the suit property. It is specific case of the petitioner is that the suit property is different from property, in which he is in possession and enjoyment of the



property. The respondent has filed suit for injunction on the ground that the petitioner is interfering with his peaceful possession and enjoyment of the suit property. It is for the respondent, to prove that he is in possession of the suit property and petitioner is interfering with his possession. It is well settled that in a suit for injunction Advocate Commissioner need not be appointed to measure the property or note down the physical features. In the present case, there is no exception to deviate from well settled judicial pronouncement. In the circumstances, the judgment relied on by the learned counsel for the petitioner is not applicable to the facts of the present case. The learned Judge considering all these aspects and has rightly dismissed the application and there is no illegality or irregularity warranting interference by this Court.

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

Sd/-
Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To

The I-Additional District Munsif Court,
Tirunelveli.
+1cc to M/S.H.Arumugam, Advocate, SR.9509

C.R.P (MD) No.327 of 2017 (PD)
21.02.2017

AM

KK-CM-MSA-03.03.2017-3p-3c