



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)Nos.2669 & 2640 of 2016 (PD)
and
C.M.P(MD)No.12525 of 2016

C.R.P(MD)No.2669 of 2016

Chandramouli .. Applicant/Plaintiff/Revision Petitioner

Vs.

Dinesh .. Respondent/Defendant/Respondent

PRAYER: Civil Revision Petitions are filed, under Article 227 of the Constitution of India, to call for the records relating to the Order and Decreetal order, dated 02.03.2016 in I.A.No.542 of 2015 in O.S.No.179 of 2014 on the file of the District Munsif, Periyakulam and set aside the same and allow the present Civil Revision Petition.

For Petitioner : Mr.A.Sivasubramanian
For Respondent : Mr.P.Muthuvijaya Pandian

C.R.P(MD)No.2640 of 2016

K.Dinesh .. Petitioner/Defendant

Vs.

A.Chandramouli .. Respondent/Plaintiff

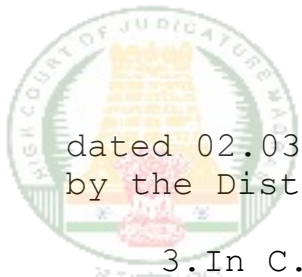
PRAYER: Civil Revision Petitions are filed, under Article 227 of the Constitution of India, to direct the District Munsif Court, Periyakulam, to dispose the O.S.No.179 of 2014 within a time frame fixed by this Hon'ble Court and allow this Civil Revision Petition.

For Petitioner : Mr.P.Muthuvijayapandian

COMMON ORDER

<https://hcservices.ecourts.gov.in/hcservices/>
The issue involved in both the CRPs are interlinked and hence, both CRPs are disposed of by common order.

2.The C.R.P(MD)No.2669 of 2016 is filed by the petitioner to call for the records relating to the Fair and Decreetal order,



dated 02.03.2016 in I.A.No.542 of 2015 in O.S.No.179 of 2014 passed by the District Munsif, Periyakulam and set aside the same.

3. In C.R.P(MD)No.2669 of 2016, the petitioner is the plaintiff. The respondent is the defendant. The petitioner filed O.S.No.179 of 2014 for injunction, restraining the respondent from interfering with his peaceful possession and enjoyment of the suit property. The respondent filed written statement on 02.02.2015 disputing the averments mentioned in the plaint. The petitioner filed I.A.No.542 of 2015 for appointment of Advocate Commissioner to inspect the suit property and to file a report with regard to the trees in the suit property. The respondent filed counter affidavit and opposed the said application for appointment of Advocate Commissioner. The respondent further submitted that the petitioner filed suit for permanent injunction and it is for the petitioner to prove his case by filing documents and letting in evidence, Advocate Commissioner cannot be appointed in the nature of the relief sought for by the petitioner.

4. The learned Judge by the order order, dated 02.03.2016 dismissed the application holding that it is for the petitioner to prove his case by letting in evidence.

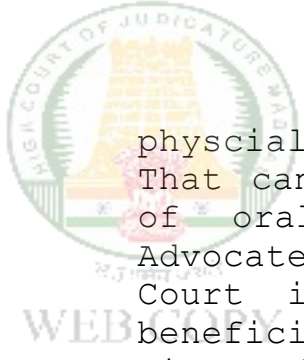
5. Against the order of dismissal, the petitioner has filed the present C.R.P(MD)No.2669 of 2016.

6. The learned counsel for the petitioner submitted that the learned Judge failed to see that in the written statement filed by the respondent, he has disputed the description of the property and extent of the property. In view of the fact that the respondent has disputed the physical features of the suit property, appointment of Advocate Commissioner, is necessary. The learned Judge failed to consider the averments made in the plaint, written statement, affidavit and counter affidavit and without considering the same in respect of the suit property, dismissed the application, which is contrary to law.

7. The learned counsel for the petitioner in support of his contention relied on the judgment reported in 2015(5) L.W.691 (Sakthivel vs. Govindammal & another) wherein in paragraphs 7 & 8 it has been held as follows:-

"7. The principle of law stated by the trial Court in the impugned order that who is in possession has to be proved by the parties by relevant document is correct. But application of the principle depends on the stage of suit, type of the suit and the averments raised in the petitioner and counter. Now, this suit for injunction. Specific description of property has been given in the plaint schedule and the defendants in their written statements contradicts the said identity of the property and to strengthen his case he would also furnish his property schedule.

8. In facts and circumstances, dispute as to the



physical features and identity of the property is involved. That cannot be established before the Court by any amount of oral evidence. In such circumstances, report of Advocate/Commissioner as to the said aspect will assist the Court in taking a correct decision. It will also be beneficial to both sides. In this view of the matter, the view taken by the trial Court in I.A.No.838 of 2014 is perverse and it warrants our interference."

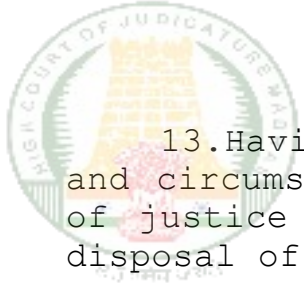
8.The learned counsel for the respondent/Caveator submitted that suit is for permanent injunction in respect of the suit property. It is for the petitioner to prove his claim. The learned judge has considered this aspect and dismissed the application and there is no error in the said order.

9.I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent/caveator and also perused the entire materials on record and judgments relied on by counsel for the petitioner.

10.From the materials, it is seen that the petitioner has filed suit for permanent injunction stating that he is in possession and enjoyment of the suit property and prayed for injunction restraining the respondent from interfering with his peaceful possession and enjoyment of the suit property. The petitioner filed I.A.No.542 of 2015 for appointment of Advocate Commissioner and to inspect the suit property and file his report. The learned Judge considering the nature of the relief sought for in the suit, dismissed the application on the ground that the respondent is disputing the description given by the petitioner about the suit property. This will not be a ground for appointment of Advocate Commissioner. The suit filed by the petitioner is for injunction. In the circumstances, the learned Judge has rightly held that it is for the petitioner to prove his claim by letting in oral and documentary evidence. There is no illegality or irregularity warranting interference by this Court. The judgments relied on by learned counsel for petitioner is not applicable to the facts of the present case.

11.In the result, the C.R.P.(MD)No.2669 of 2016 is dismissed. No costs. Consequently, C.M.P(MD)No.12525 of 2016 is also dismissed.

12.In C.R.P(MD)No.2640 of 2016, the petitioner is the defendant. The respondent is the plaintiff. The respondent filed O.S.No.179 of 2014 for injunction, restraining the petitioner from interfering with his peaceful possession and enjoyment of the suit property. The petitioner filed written statement on 02.02.2015 disputing the averments mentioned in the plaint. According to the petitioner, even after filing written statement on 02.02.2015, there is no progress in the suit. Therefore, he has come out with the present Civil Revision Petition for speedy disposal.



13. Having been taken into consideration of the material facts and circumstances, this Court is of the view that in the interest of justice a direction to the Trial Court is to be issued for disposal of the suit.

14. Accordingly, C.R.P(MD)No.2640 of 2016 is disposed of. The learned District Munsif, Periyakulam, is directed to dispose the suit in O.S.No.179 of 2014, as expeditiously as possible, in any event, not later than 31st July 2017. No costs.

Sd/-
Assistant Registrar(AE)

/TRUE COPY/

Sub Assistant Registrar

To

The District Munsif
Periyakulam.

+1 cc to Mr.P.Muthuvijaya Pandian, Advocate, SR.No:978

am
sva/bs/20.02.2017/4p/3c

C.R.P(MD)Nos.2640 & 2669 of 2016 (PD)
05.01.2017