



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.07.2018
CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

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C.R.P(PD) (MD) No.727 of 2014
and
M.P(MD) No.1 of 2014

1.V.Dharmaraj

2.V.Nagaraj : Petitioners/Petitioners/Defendants

vs.

P.Rathinam : Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree dated 04.11.2013 in I.A.No.426 of 2013 in O.S.No.118 of 2007 on the file of the District Munsif Court, Devakottai.

For Petitioners	: Mr.J.Anandkumar
For Respondent	: Mr.B.Muruganandam

ORDER

This Civil Revision Petition is filed against the order and decree dated 04.11.2013 in I.A.No.426 of 2013 in O.S.No.118 of 2007 on the file of the District Munsif Court, Devakottai.

2.The brief facts that are necessary for the disposal of this civil revision petition are as follows:

(i)The respondent in this civil revision petition, as plaintiff filed a suit in O.S.No.118 of 2007 on the file of District Munsif Court, Devakottai, for declaration of title and also for recovery of possession of the suit property, from the revision petitioners. Even in the plaint, it is admitted that the defendants, namely, the revision petitioners herein, are enjoying the suit property and therefore, the suit for recovery of possession was filed. It is further submitted that the suit was originally allowed and on appeal filed by the defendants, it was remitted to the trial Court giving liberty to the parties to produce further documents.

<https://hcservices.ecourts.gov.in/hcservices/> the trial Court, the revision petitioners filed I.A.No.426 of 2013 for appointment of an Advocate Commissioner to note down the physical features and to submit a plan and report.



This application was dismissed by the Trial Court on the ground that Advocate Commissioner cannot be appointed to find out one's possession and enjoyment of the property. Aggrieved by the same, the present Civil Revision Petition has been filed.

3. It is inappropriate for the learned counsel for the petitioner to advance an argument that the order dismissing the petition seeking appointment of an Advocate Commissioner, is illegal. It is to be noted that the suit itself is filed for declaration of title and for recovery of possession. From the nature of pleadings raised by the respective parties, this Court is not able to see any dispute regarding measurement or identity of the suit property.

4. In the affidavit filed in support of the petition, the revision petitioners have stated that they have purchased the property from the plaintiff on 27.07.1989. It is the case of the revision petitioners that appointment of Advocate Commissioner is necessary so as to ascertain the fact that they are in continuous enjoyment of the suit property. The contention of the revision petitioners before the lower Court is unsustainable. Having regard to the facts of the case, this Court is able to see that there is no dispute with regard to identity of the suit property. Secondly, the plaintiff himself has admitted that the defendants are in possession of the suit property.

5. In such circumstances, the Court cannot appoint an Advocate Commissioner, so as to ascertain whether the defendants are in possession of the suit property for a long time. It is also well settled that Advocate Commissioner cannot be appointed to fish or collect evidence.

6. This Court finds no bona-fide for filing the application seeking appointment of Advocate Commissioner. Hence, this Civil Revision Petition is dismissed and the order passed by the District Munsif Court, Devakottai, dated 04.11.2013, in I.A.No.426 of 2013 in O.S.No.118 of 2007 is upheld. No costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The District Munsif Court,
<https://hcservices.ecourts.gov.in/hcservices/>
Devakottai.



2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. **(2 copies)**

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+1CC to Mr.B.Muruganandam, Advocate, SR.No.74476

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M.P. (MD) No.1 of 2014
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CP

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