



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (PD) (MD) No.1177 of 2018
in
C.M.P (MD) No.5000 of 2018

G.Gopal

... Petitioner/Petitioner/Plaintiff

Vs.

R.Navaneetha Krishnan

... Respondent/Respondent/Defendant

PRAYER: The Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the order passed in I.A. No. 69 of 2018 in O.S.No.1295 of 2015 dated 12.04.2018 on the file of the III Additional District Munsif Court, Trichy.

For Petitioner : Mr.A.Ramesh

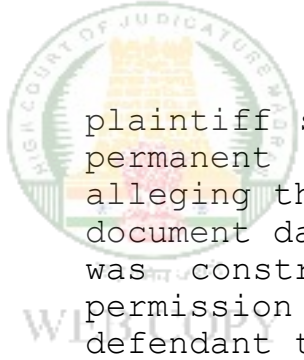
ORDER

The Civil Revision Petition is filed by the plaintiff in O.S.No.1295 of 2015 on the file of the III Additional District Munsif Court, Thiruchirapalli .

2. The brief facts which are necessary for the disposal of the Civil Revision Petition are as follows:

The revision petitioner filed a suit in O.S.No.1295 of 2015 for permanent injunction restraining the defendants and their men from interfering with his peaceful possession and enjoyment of suit property.

3. The case of the plaintiff is that the suit property is the Government Poramboke land and that the plaintiff had constructed the house and running a welding workshop in the suit property. It is the further case of the plaintiff that the plaintiff is the occupant of the suit property for more than 20 years and the defendant is a stranger to the suit property. The plaintiff further states in the plaint that he has obtained electricity service connection on 10.06.2010 for his residence in the suit property. It is also stated by the plaintiff that he has been paying property tax. Alleging that the defendant had made an attempt to encroach into the suit property and to evict the plaintiff by force and illegal means, the



plaintiff stated that he has cause of action to file the suit for permanent injunction. The suit was contested by the defendant alleging that the suit property was purchased by him by a registered document dated 21.10.2009 and that the building in the suit property was constructed by the defendant after getting building plan permission from the local body. It is the specific case of the defendant that the defendant constructed four shops and that one of such shops was let out to the plaintiff on 31.05.2010 for a period of five years for carrying out business. It is stated that the plaintiff paid an advance of Rs.10,000/- (Rupees Ten thousand only) and agreed to pay a sum of Rs.1,500/- (Rupees One thousand and Five hundred only) towards monthly rent. Though the fact that the electricity service connection was obtained in the name of the plaintiff was admitted, it is the case of the defendant that the service connection was obtained by the plaintiff with the permission of the defendant. The further averments in the plaint were also specifically denied by the defendant.

4. During the pendency of the suit filed by the plaintiff he filed an application in I.A.No. 69 of 2018 in O.S.No.1295 of 2015 for appointment of an Advocate Commissioner to note down the physical features of the suit property and measure the suit property with the assistance of a competent surveyor. In the affidavit filed in support of the petition, the revision petitioner has stated that unless his possession and enjoyment of the suit property is taken note by the Court by appointment of an Advocate Commissioner he will be put to irreparable loss.

5. The said application was dismissed by the learned III Additional District Munsif, Trichy by stating that the plaintiff is bound to prove his case that he is in possession and enjoyment of the joint property and that for the purpose of proving his case, the plaintiff cannot seek for appointment of Advocate Commissioner. It is settled position that an Advocate Commissioner cannot be appointed for the purpose of ascertaining as to whether the plaintiff is in possession and enjoyment of the suit property or not. In this case the defendant admitted that the plaintiff is in enjoyment of the suit property and carrying on business. The purpose of appointment of Advocate Commissioner is not stated in the petition filed in support of the petition. Having regard to the specific pleadings raised by the defendants in the suit, the whole case revolves on the issue whether the plaintiff is the absolute owner or he is a tenant under the defendant as contended in the written statement.

6. There is no dispute with regard to the identity of the suit property or about the measurement. Hence this Court find no merits to interfere with the order of the lower appellate court as the reasons assigned by the III Additional District Munsif Trichy are proper and appropriate.



7. As a result, the Civil Revision Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

WEB COPY

/True copy/

Sub Assistant Registrar

To:

The III Additional District Munsif,
Thiruchirapalli.

+1cc to Mr.A.Ramesh, Advocate, SR.No.69063.

C.R.P. (PD) (MD)No.1177 of 2018

AAV/RMK

RAM/SKN RSK/SAR 3/02.07.2018/3P/3C