



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2018

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD) No.726 of 2017 (PD)

and

C.M.P. (MD) .No.3308 of 2017

M.S.Sundaralingam

... Petitioner / Petitioner / Defendant

Vs.

G.Gokula Krishnan

... Respondent / Respondent / Plaintiff

PRAYER: Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 19.08.2016, passed in I.A.No.113 of 2015 in O.S.No.90 of 2014 by the Principal District Munsif cum Judicial Magistrate Court, Eraniel, Kanyakumari District.

For Petitioner : Mr.T.Murugan

ORDER

This civil revision petition has been filed by the revision petitioner / defendant, challenging the order dated 19.08.2016 passed in I.A.No.113 of 2015 in O.S.No.90 of 2014 by the learned Principal District Munsif cum Judicial Magistrate, Eraniel, Kanyakumari District.

2. This matter is came up for admission today. It is seen from the record that the respondent / plaintiff has filed the suit against the revision petitioner / defendant in O.S.No.90 of 2014 for permanent injunction. According to the respondent / plaintiff, he has purchased the suit property by way of a sale deed, dated 15.02.2011 and from the date of purchase, he has been in possession and enjoyment of the suit property by planting trees. According to the revision petitioner / defendant, he has executed the sale deed in favour of the father of the plaintiff only on compulsion for the amount borrowed from the father of the plaintiff and subsequently, the father of the plaintiff has sold the suit property to one third party, who in turn sold the suit property to the plaintiff and that though the suit property was changed in the hands of above persons, the revision petitioner / defendant has been in possession and enjoyment of the suit property for several decades by planting trees. In order to show his possession, the revision petitioner / defendant has filed a petition for



appointment of an Advocate Commissioner. The Court below has dismissed the said application holding that the possession cannot be proved by the report of an Advocate Commissioner, against which this civil revision petition has been filed by the revision petitioner / defendant.

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3. The main contention of the learned counsel for the revision petitioner / defendant is that he sought for appointment of an Advocate Commissioner only to identify the suit property and to ascertain the physical features of the suit property and no prejudice would be caused to the respondent / plaintiff by appointment of an Advocate Commissioner. The said contention of the revision petitioner / defendant cannot be accepted, as it is not a claim of the revision petitioner / defendant that he is the adjacent owner of the suit property and his property has been wrongly mentioned as the property of the respondent / plaintiff. The relief of permanent injunction sought for by the respondent / plaintiff is based on the registered sale deed. The claim of the revision petitioner / defendant is based on the possession. The possession follows title. But, the possession cannot be proved through the report of the Advocate Commissioner and it has to be proved only through documents. There is no merit in this petition. This Court does not find any reason to interfere with the order of the Court below.

4. In view of the above, this civil revision petition is dismissed at the stage of admission. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District Munsif cum Judicial Magistrate Court,
Eraniel, Kanyakumari District.

+1cc to M/S.T.MURUGAN, Advocate SR.No.46424.

C.R.P. (MD) No.726 of 2017 (PD)
05.02.2018

gcg

SDS/SV:MMS/SAR 3/21.02.2018/2P/3C

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