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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2018

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

C.R.P. (PD) (MD) No.88 of 2013

and

M.P. (MD) No.1 of 2013

C.Bose :Petitioner/Defendant/Plaintiff

Vs.

1.M.Pandi

2.P.Soundiram

:Respondents/Petitioners/Defendants

Prayer: Civil Revision petition is filed under Article 227 of Constitution of India, to set aside the order dated 20.12.2012, passed in I.A.No.997 of 2012 in O.S.No.473 of 2012 on the file of the District Munsif Court, Melur.

For Petitioner : Mr.V.Nagendran

For Respondents : Mr.P.T.S.Narendravasan

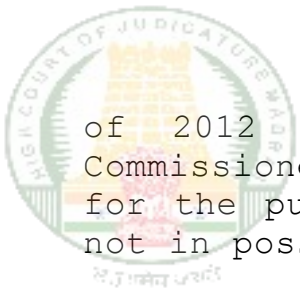
O R D E R

The petitioner in this revision petition is the plaintiff in the suit in O.S.No.473 of 2012 on the file of the District Munsif Court, Melur.

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

2.1.The revision petitioner filed the suit in O.S.No.473 of 2012 before the District Munsif Court, Melur for a declaration that the suit properties belong to the plaintiff absolutely and for consequential permanent injunction restraining the defendants 1 and 2 from interfering with the peaceful possession and enjoyment of the plaintiff.

2.2.It is also admitted that the plaintiff filed an interlocutory application in I.A.No.950 of 2012 for temporary injunction during the pendency of the suit and that the trial Court granted an interim injunction till 04.01.2013. It appears that the respondents in this revision petition, who are the defendants in the suit filed petitions in I.A.No.996 of 2012 in O.S.No.473 of 2012 for vacating the interim order and I.A.No.997



of 2012 in O.S.No.473 of 2012 for appointing an Advocate Commissioner to note down the physical features of the property for the purpose of establishing their case that the plaintiff is not in possession of the suit properties.

2.3.The petition filed by the defendants in I.A.No.997 of 2012 in O.S.No.473 of 2012 was allowed by the trial Court without even issuing notice to the revision petitioner. The revision petitioner therefore, filed the above revision petition contending that appointing Advocate Commissioner for the purpose of proving one's possession is not sustainable and that the Court below ought not to have allowed the application without issuing notice to the respondent.

3.The learned Counsel for the respondents vehemently contended that the order of the lower Court does not suffer from any infirmity or illegality and that the revision petition is liable to be dismissed as no prejudice will be caused to the revision petitioner.

4.This Court is fully convinced that the order passed by the trial Court in appointing Advocate Commissioner without even ordering notice to the revision petitioner is improper and illegal. Further more, in the affidavit filed in support of the petition, the respondents herein specifically states that by appointing Advocate Commissioner, the contention of the plaintiff that the he is in possession of the property will be disproved. In such circumstances, the order passed by the trial Court in I.A.No.997 of 2012 in O.S.No.473 of 2012 will act against the interest of the revision petitioner. Hence, allowing the application for appointing Advocate Commissioner without even issuing notice to the other sides cannot be justified.

5.As a result, the Civil Revision Petition is allowed and the order passed by the learned District Munsif, Melur in I.A.No.997 of 2012 in O.S.No.473 of 2012 is set aside. However, the matter is remitted to the trial Court and the learned District Munsif, Melur is directed to consider the application in I.A.No.997 of 2012 in O.S.No.473 of 2012, after issuing notice to the plaintiff and dispose of the application on merits. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar



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

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+1cc to Mr.K.S.Prakash, Advocate Sr.No.67223

CMR

VB/PN/SAR2/05.07.2018/3P/5C

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