

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P(PD)No.3676 of 2013

and

M.P.No.1 of 2013

1. K.Jayaraman

2. J.Kolanjinathan

.. Petitioners

Vs.

1. R.Arumugham

2. R.Anjammal

3. R.Saravanan

4. R.Natarajan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree dated 16.08.2013 made in I.A.No.124 of 2013 in O.S.No.311 of 2011 on the file of the Principle District Munsif, Cuddalore.

For Petitioner : Mr.P.Dinesh Kumar
For R1 : Mr.N.Suresh
For R2 to R4 : No appearance

ORDER

This Civil Revision Petition has been filed against the dismissal order and decree dated 16.08.2013 made in I.A.No.124 of 2013 in O.S.No.311 of 2011 on the file of the Principal District Munsif, Cuddalore filed by the revision petitioner for appointment of Advocate Commissioner to measure the property with the help of the qualified surveyor for a direction to note down the physical features in the suit property and to file his report. The trial court dismissed the application.

2. The main averments of the plaintiff in the plaint is that he is in permissive possession of the suit property from one Rajagopal. He has put up construction in the said property and is living for more than 40 years. Therefore, he sought injunction against the first defendant stating that he purchased the said property on the ground of his possession. On the strength of his possession, the first defendant denied the contention of the plaintiff that he has no right whatever in the suit property. He has purchased the property on 02.04.1992 and disputed the possession of the plaintiff. The trial court dismissed the application filed for appointment of Advocate Commissioner as against which the present Civil Revision Petition has been filed.

3. The learned counsel appearing for the revision petitioner would submit that appointing the Advocate Commissioner for merely noting down the physical feature of the suit property would no way prejudice the respondents, since the respondents dispute the possession of the plaintiff. Hence, prayed for allowing the revision petition.

3. Heard the learned counsel appearing for the respondent and perused the order of the trial court and pleadings of the respective parties.

4. The suit itself is filed for permanent injunction in respect of 36 cents with specific boundaries. The case of the plaintiff/revision petitioner is that they were in possession of the property for more than 40 years and put up houses in the suit property and infact they have permitted to occupy the suit property by one Rajagopal. Therefore, the plaintiffs are in possession of the suit property. Ofcourse, the first defendant has disputed the possession of the plaintiffs and submitted that the first defendant/first respondent has purchased the property in the year 2012 itself. The third defendant infact filed the written statement resisting the claim of the plaintiffs.

5. It is to be noted that when it is the plaintiffs specific case that they are in possession of the specific area with specific boundaries, it is for the plaintiffs to prove their possession before the trial court for permanent injunction. They cannot rely upon the Commissioner Report to prove their possession, and the Commissioner cannot be permitted to be appointed to gather evidence to find out who is in possession or occupation of the building in the suit property. When the plaintiffs themselves laid a suit in respect of specific item of the property with specific boundaries appointment of the Advocate Commissioner to file a report and to note down the physical feature, is certainly amount to gathering the evidence itself for the plaintiffs to establish their case before the court. Hence, this court does not find any infirmity in the order of the trial court.

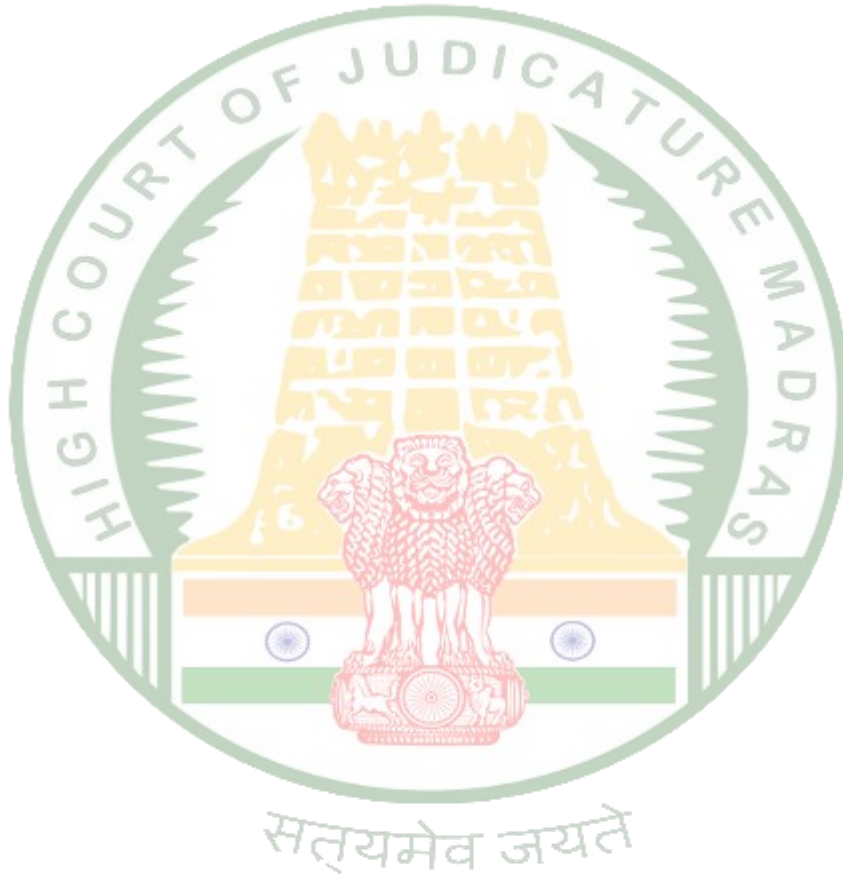
6. Accordingly, the revision petition is dismissed and the trial court is directed to dispose of the suit within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

11.02.2019

Index: Yes/No
Speaking/ Non-Speaking
ssi

To

1. The Principle District Munsif, Cuddalore.
2. The Section Officer, VR Section, Madras High Court.



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N.SATHISH KUMAR, J.

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