

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2019

CORAM

THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP.(PD)No.1379 of 2019

and

CMP.No.9000 of 2019

A. Karuna

...Petitioner

Vs

K. Gopal

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order dated 15.11.2018 passed in I.A.No.2771 of 2014 in O.S.No.19 of 2013 on the file of the District Munsif's Court, Thiruvallur and thereby allow this Civil Revision Petition.

For Petitioner : Mr. K. R. Pugazhendhi
for Mr. N. R. Gopaalan
N. K. Sriraman

ORDER

The above Civil Revision Petition is filed challenging the order of the learned District Munsif, Thiruvallur dismissing the Petition filed by the plaintiff in I.A.No.277 of 2011 in O.S.No.961 of 2013 for an appointment of Advocate Commissioner to inspect the

suit schedule property and note down the physical features along with the assistance of the surveyor and measure the same by metes and bounds and submit a report.

2. The suit has been filed for a bare injunction in respect of the A schedule and B schedule Property which has been described with boundaries and measurements. It is the case of the plaintiff that the A Schedule property belongs to one Valliammal which is the ancestral property and she has inherited the same by means of a partition and sold to Suburaya Reddy as early as in 1936 under a registered sale deed.

3. As regards the B schedule property, it is the case of the plaintiff that the same belongs to one Mariammal who also sold the same to Suburaya Reddy in the year 1936 under a registered sale deed. Therefore, the plaintiff traced his title through registered sale deeds of the year 1936. Considering the fact that the defendant was interfering with the peaceful possession and enjoyment of the suit property by the plaintiff, he is constrained to file the suit for bare injunction.

4. The respondent had filed the written statement assailing the averments contained in the plaint and also stating that the

plaintiff had no right both in the A as well as B schedule properties and that it is the defendant and his brother who owned the property. Subsequent to the filing of the written statement, the revision petitioner/plaintiff has come forward with an application in I.A.No.2771 of 2014, which is now the subject matter of the revision petitioner. In the affidavit filed in support of the said application, the plaintiff/revision petitioner would contend as follows:

" The respondent/defendant have more men and money power and it can be prevented only by this Hon'ble Court's order. Hence there is no other alternative except to file this application for ad interim injunction restraining the respondent/defendant her men, agent servants and others on behalf of the defendant interfering with the peaceful possession and enjoyment till the disposal of the above suit.

I further submit that in the written statement filed by the respondent/defendant the defendant stated that I have encroached the land."

5. The said application was objected to by the respondent who would submit that the application was nothing but an attempt to collect evidence by the revision petitioner/plaintiff and to protract the proceedings. The learned District Munsif after hearing both parties

and after extracting the judgments of this Court which have come down heavily on appointment of an Advocate Commissioner in a suit for bare injunction as a means of collecting evidence, ultimately, dismissed the said Petition. Challenging the same, the plaintiff is before this Court.

6. Heard Mr. K. R. Pugazhendhi, learned counsel on behalf of the revision petitioner/plaintiff. He would restrict the tax received by him before the trial Court.

7. After hearing the arguments and perusing the papers, this Court proceeds to pass the following order:

The revision petitioner has come forward with a specific case that he is holding valid title under two different deeds. Further, he has described his property with boundaries and measurements. If the defendant has objected to the same, it is for the defendant to prove the said contention and the plaintiff can independently prove his case. There is no necessity for appointment of an Advocate Commissioner which is nothing but an attempt to collect evidence, which has been time and again been deprecated both by this Court as well as by the Hon'ble Apex Court. I do not find any infirmity in the order passed by the Court below. Civil Revision Petition stands

dismissed. Consequently, connected Miscellaneous Petition is closed.

11.04.2019

Index: Yes/No
Internet:Yes/No
Speaking order / Non-speaking order

mrn

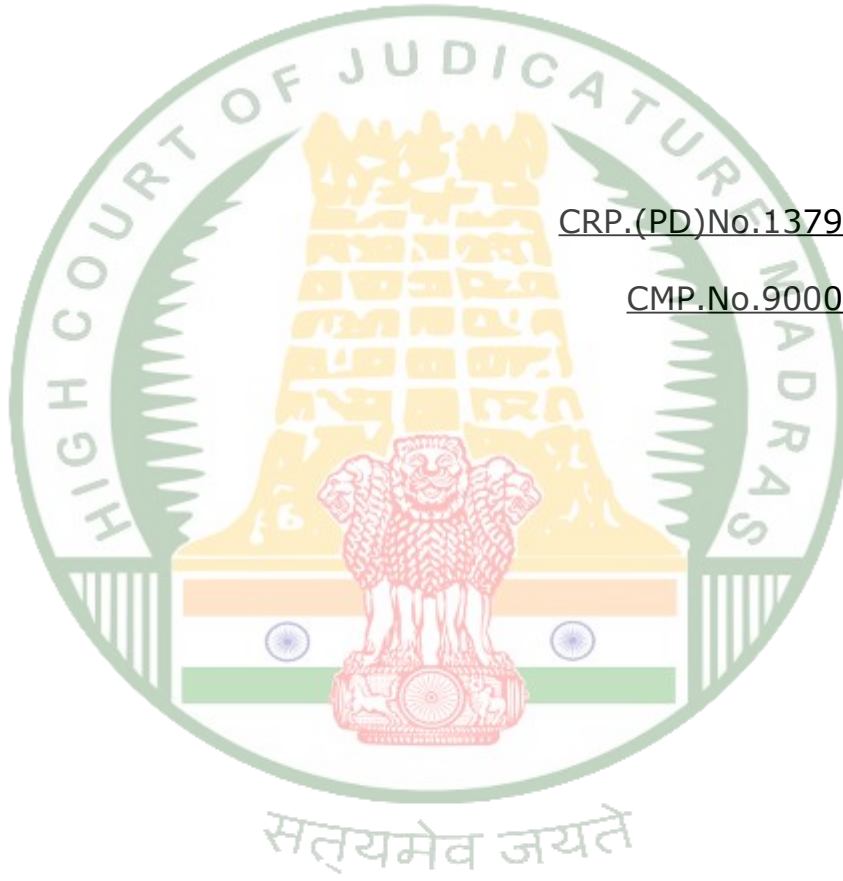
To,
The District Munsif's Court,
Thiruvallur.



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P.T.ASHA, J.,

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