



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10..12..2019
CORAM

WEB COPY

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition (PD) No.4054 of 2019
and
C.M.P.No.26609 of 2019

Velmurugan

... Petitioner

-Versus-

M.Rajeshkumar
Son of Mani
rep by his Power agent
Saraswathi Wife of Mani

... Respondent

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 15.10.2019 made in I.A.No.4 of 2019 in O.S.No.85 of 2017 by the learned Principal District Munsif, Erode, Erode District.

For Petitioner : Mr.M.Guruprasad

ORDER

This revision petition is directed against the order whereby learned Principal District Munsif, Erode, dismissed the application of the petitioner thereby refusing to issue a Warrant of Commission to an Advocate Commissioner to measure the suit schedule property as per the sale deed and fix boundary lines.

2. The petitioner is the sole defendant in the suit in O.S.No.85 of 2017. The respondent has filed the suit for bare injunction restraining the petitioner from interfering with his peaceful possession and enjoyment of the property alleging that there is a vacant site of measuring 1 1/2 feet and that the petitioner is trying to encroach upon the same. The petitioner filed his written statement inter alia contending that it is only the respondent who is trying to encroach upon his property and he never attempted to interfere with the peaceful possession of the respondent. After completion of the trial, the petitioner has filed the application under revision for appointment of Advocate Commissioner. The trial court has



dismissed the application holding that the petition came to be filed only in order to drag on the proceedings. It is this order which is now under challenge in this revision petition.

3. I have heard the learned counsel for the petitioner and also perused the records carefully.

4. The petitioner is the defendant in the suit. The suit is for bare injunction. It is for the respondent/plaintiff to prove his case by way of evidence, both oral and documentary in the manner known to law that the petitioner/defendant is trying to interfere with his peaceful possession and the petitioner/defendant need not risk himself to disprove the case of the respondent/plaintiff. That apart, though the petitioner/defendant had chosen to file his written statement in the year 2017, kept quiet for more than two years and after completion of trial, he came up with an application for appointment of Advocate Commissioner. The trial court has rightly considered the fact and dismissed the application and there is no illegality or irregularity in the same. Thus, this court does not find any merit in the revision and the same deserves only to be dismissed.

5. In the result, this Civil Revision Petition is dismissed. However, considering the fact that the suit is pending since 2017 and the trial is also over, the trial court is directed to dispose of the same within a period of three months from the date of receipt of a copy of the order. No costs. Consequently, connected CMP is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

kmk

To

1.The Principal District Munsif,
Erode, Erode District.

+1 cc to Mr.M.Guruprasad Advocate sr103369

Civil Revision Petition
No.4054 of 2019

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