



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.09.2019

CORAM

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

C.R.P. (MD) No.1179 of 2011
and M.P (MD) No.1 of 2011

K.Kattamalai @ Angappa Thevar ... Petitioner/Respondent/Plaintiff

Vs.

1.K.Sangaiya Thevar
2.R.Sethuramalingam
3.S.Kaliraj
4.Mupudathi

... Respondents

PRAYER:- Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 14.12.2010 passed in I.A.No.1008 of 2010 in O.S.No.249 of 2008 on the file of the Additional District Munsif Court, Sankarankoil by allowing this Civil Revision Petition.

For Petitioner : Mr.D.Nallathambi

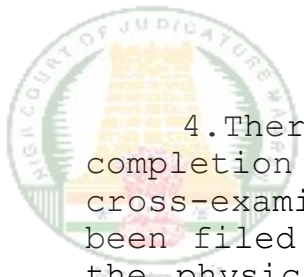
For R1 to R4 : Mr.M.Thirunavukarasu

ORDER

The above Civil Revision Petition has been filed challenging the order dated 14.12.2010 passed in I.A.No.1008 of 2010 in O.S.No.249 of 2008 on the file of the Additional District Munsif Court, Sankarankoil.

2.The respondents herein filed an application for appointment an Advocate Commissioner to note down the physical features of the suit scheduled property with the help of a qualified surveyor and the same was allowed. Aggrieved over the same, the petitioner filed the present Civil Revision Petition.

3.The revision petitioner, who is the plaintiff in O.S.No.249 of 2009 on the file of the Additional District Munsif Court, Sankarankoil, had filed the suit for bare injunction restraining the respondents / defendants from interfering with the peaceful possession and enjoyment of the suit schedule property. It appears that the first respondent herein had also filed the similar suit for injunction in O.S.No.342 of 1995 on the file of the Additional District Munsif Court, Sankarankoil. The said suit was dismissed after recording that the first respondent is not in possession of



4. Thereafter, a suit in O.S.No.249 of 2009 was filed. After completion of the evidence, when the matter was posted for the cross-examination of the defendants, the impugned application has been filed for appointment of an Advocate Commissioner to note down the physical features. The only reason that is given for filing application is that the Advocate Commissioner shall be able to note down the physical features of the property to enable the Court to come to a fair conclusion in the suit.

5. This application was resisted by the plaintiff / revision petitioner *inter alia* contending that the suit filed by the first respondent in O.S.No.342 of 1995 was dismissed and appeal that was filed against the said judgment in A.S.No.30 of 2003 also ended in a dismissal and the petitioner was only attempting to protract the proceedings.

6. The learned Additional District Munsif Court, Sankarankoil, after hearing both the parties proceeded to allow the said application and the same is challenged by the revision petitioner in this Civil Revision Petition.

7. Heard the learned counsel on either side.

8. It has been time and again held that in a suit for bare injunction, the Advocate Commissioner cannot be used to substitute evidence. The application has been moved to measure the property, as per the measurement given in the written statement as well as the boundaries given therein. By allowing this application, the learned Judge has enabled the respondents to use the Advocate Commissioner's report as an evidence.

9. In a suit for bare injunction, it is for the plaintiff to prove his possession to the property on the date of institution of the suit and also to show as to how his possession was threatened by the defendant. Therefore, there is no necessity for appointing an Advocate Commissioner to note down the physical features.

10. The order passed by the Additional District Munsif Court, Sankarankoil suffers from an infirmity. This Court, therefore, sets aside the order in I.A.No.1008 of 2010 in O.S.No.249 of 2008 and accordingly, this Civil Revision Petition is allowed. The learned Additional District Munsif Court, Sankarankoil is directed to dispose of the suit O.S.No.249 of 2008, within a period of three months from the date receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P & A)

// True Copy //



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To

The Additional District Munsif Court,
Sankarankoil.

+1CC TO MR.D.NALLATHAMBI, Advocate Sr. No.87313

+1CC TO MR.M.THIRUNAVUKKARASU, Advocate Sr. No. 87277

C.R.P. (MD) No.1179 of 2011
17.09.2019

SGS (CO)

TR(17.10.2019) 3P 4C