



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

C.R.P. (PD) (MD) No.1242 of 2013

and

M.P (MD) No. 1 of 2013

Headmaster
John's High School,
Palayamkottai,
Tirunelveli - 2.

..Petitioner/Petitioner/Defendant

-vs-

P.S.Chandrasekara Raja

.. Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 05.02.2013 in I.A.No.1835 of 2012 in O.S.No.277 of 2011 on the file of the Principal District Munsif, Tirunelveli.

For Petitioner : Mr.V.Balaji

For Respondent : Mr.F.X.Eugene

ORDER

This Civil Revision Petition is filed by the defendant in a suit for bare injunction. The respondent herein is the plaintiff in the suit. According to the plaintiff, he has purchased the suit property, by way of a registered sale deed from his vendor and that he is in possession and enjoyment of the same, with which, the defendant is trying to interfere. By claiming so, the plaintiff approached the trial Court and filed the said suit for bare injunction. Pending disposal of the said suit, the defendant filed I.A.No.1835 of 2012 for appointment of an Advocate Commissioner to note down the physical features and measure the suit property with the help of the Taluk Surveyor.

2.It is the contention of the defendant that there is some difficulty in identifying the suit property and therefore, only by appointing the Advocate Commissioner and getting his report, the trial Court will be in a position to decide the suit. The trial Court, however, rejected the application by observing that in a suit for bare injunction, it is for the plaintiff to prove that he is in possession and enjoyment of the same by adducing evidence and therefore, it is not for the defendant to come out with such application for appointment of Commissioner.

3. The learned counsel for the petitioner contended that nothing wrong in appointing an Advocate Commissioner to measure the property to identify the same, as it would only facilitate the trial Court to decide the suit.

4. I am not convinced with the above submission made by the learned counsel for the petitioner for the simple reason that the suit is only for bare injunction and therefore, it is for the plaintiff, who seeks such relief, has to establish his case first by adducing evidence in support of his pleadings. The said stage has not come. Even before the trial commences, the defendant sought for appointment of advocate Commissioner, which, the trial Court has rightly rejected. Needless to state that in a suit for bare injunction, necessity for appointment of Advocate Commissioner, that too, for identifying the suit property, does not arise, more particularly, when the plaintiff has come forward with his categorical case that he has purchased suit property, by way of sale deed and that he is in possession and enjoyment of the same. Therefore, it is for the plaintiff to prove such contention by adducing evidence. Consequently, I find that the present civil revision petition deserves no merits. Accordingly, the same is dismissed. The trial Court is directed to take up the main suit and dispose of the same on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

Sub Assistant Registrar (CS)

To

The Principal District Munsif, Tirunelveli.
+One cc to Mr. F.X. Eugene, Advocate, SR.No.73259
+One cc to Mr. V. Balaji, Advocate, SR.No.73316

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