



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 11.11.2019

CORAM

WEB COPY

THE HONOURABLE MS. JUSTICE P.T.ASHA

C.R.P. (PD) (MD)No.1445 of 2013

and

M.P. (MD)No.1 of 2013

Duraipandian .. Petitioner/Petitioner/Defendant

Vs.

Periyasamy Thevar .. Respondent/Respondent/Plaintiff

Prayer : This Civil revision petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 09.03.2013 made in I.A.No.416 of 2012 in O.S.No.333 of 2011 on the file of the learned Principal District Munsif, Sankarankovil.

For Petitioner : Mr.J.C.Rathnavel Pandian
For Respondent : No Appearance

ORDER

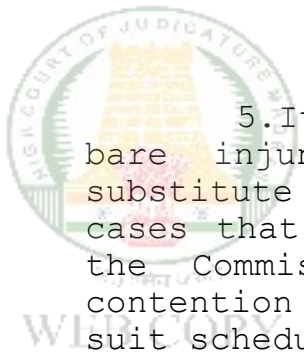
The above revision petition is filed by the defendant, challenging the dismissal of the application filed for the appointment of an Advocate Commissioner in a suit for bare injunction.

2.The brief facts are as follows:-

The plaintiff/ respondent herein had filed a suit in O.S.No.333 of 2011 on the file of the learned Principal District Munsif, Sankarankovil for bare injunction against the defendant/revision petitioner herein in respect of the suit property in which, the house is shown to be in existence. The defendant had filed a written statement refuting the same. The petition has been filed for appointment of an Advocate Commissioner in I.A.No.416 of 2012 in order to disprove the claim of the plaintiff that the house is in existence. The Courts below has dismissed the said application and challenging the same, this revision has been filed.

3.Though notice has been ordered to the respondent, none appears for the respondent.

4.Heard the counsel appearing on behalf of the revision petitioner/defendant and perused the paper.



5.It is an axiomatic principles of law that in a suit for bare injunction, an Advocate Commissioner cannot be used as substitute for gathering evidence. It is only in the rarest of rare cases that such an application can be filed. In the instant case, the Commissioner is sought to be appointed to disprove the contention of the plaintiff that house is in the existence in the suit schedule property.

6.From reading of very application, it is very clear that the defendant is only attempting to gather evidence, which cannot be permitted. The Court below has rightly dismissed the petition. I do not find any infirmity in the order passed by the Court below.

7.Accordingly, the Civil Revision Petition stands dismissed.
No Costs.

Sd/-

Assistant Registrar (AD II)

// True Copy //

Sub Assistant Registrar(CS)

Mrn

To

1.The Principal District Munsif, Sankarankovil.

+1 CC to M/s.J.C. RATHAVEL PANDIAN, Advocate (SR-97512[F] dated 12/11/2019)

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KK/SAR/05.12.2019/2P-3C/