



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2019

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**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN**

**C.R.P (MD) (PD) .No.2150 of 2013**

D.Ovvaiyar ...Petitioner/Respondent/Defendant

Vs.

P.Lakshmi ...Respondent/Petitioner/Plaintiff

**Prayer:-** This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.374/2012 in O.S.No.24/2010, on the file of District Munsif Court, Madurai Taluk dated 30.07.2013.

For Petitioner : Mr.A.B.Prabhakar

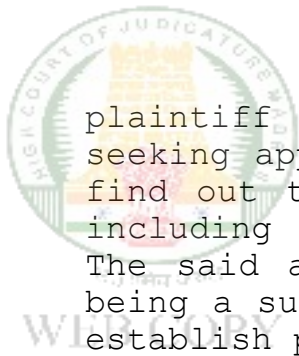
For Respondent : Mr.S.Chandrasekaran

**ORDER**

The defendant in O.S.No.24 of 2010 who is suffered an order appointing an advocate commissioner to inspect and find out the physical features of the suit property has come up with this Civil Revision Petition.

2. The suit in O.S.No.24 of 2010 was filed by the plaintiff seeking permanent injunction restraining the defendant from interfering with the possession of the suit property which according to the plaintiff measures an extent of 676 sq.ft and bounded on the north by the plaintiff's property, east by Palanisamy Servai's property, south by Vaigai River and west by a common pathway in Survey No.160/8. It is also specifically pleaded in the plaint that the defendant attempted to enclose the common pathway with fence.

3.The defendant filed a written statement contending that the plaintiff is not entitled to the entire 676 sq.ft of the property, as claimed by her, but she was entitled only about 545 sq.ft and the plaintiffs father Paramasivam has trespassed upon the defendants property and put up construction. The boundaries of the property as set out in the plaint was also denied by the defendant. The



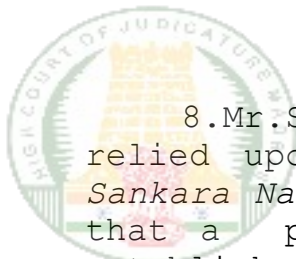
plaintiff therefore filed an application in I.A.No.374 of 2012 seeking appointment of the commissioner to inspect the property and find out the measurements, location and lie of the suit property, including the existence or otherwise of the 4 feet common pathway. The said application was opposed by the defendant contending that being a suit for permanent injunction, the plaintiff cannot seek to establish possession by appointment of the commissioner.

4.The trial Court on an consideration of the facts and circumstances of this case, concluded that the pleadings of the parties raises a doubt regarding the very lie of the property and physical features. The existence of the 4 feet common pathway is also under dispute. Therefore, the trial Court found that the appointment of commissioner would help the Court to decide the issue in a more comprehensive manner and would also reduce the bulk of oral evidence in the suit. On the said conclusion, the trial Court allowed the application of appointing the commissioner. Aggrieved over the order of the trial Court, the defendant has come forward with this Civil Revision Petition.

5.I have heard Mr.A.B.Prabhakar, learned counsel appearing for the petitioner and Mr.S.Chandrasekaran appearing for the learned counsel for the respondent.

6.Mr.A.B.Prabhakar, learned counsel for the petitioner would contend that this application for appointment of commissioner is one with the object of ascertaining the factum of possession. The suit being one for permanent injunction, it is for the plaintiff to prove possession as required under law. The plaintiff cannot seek appointment of commissioner to establish her possession of the suit property. He would also rely upon a judgment of this Court in *Meenakshi vs Vennila and another*, reported in 2008(5)CTC 181 wherein this Court had held that a commissioner cannot be appointed to ascertain the factum of possession.

7.Contending contrary, Mr.S.Chandrasekaran, learned counsel for the respondent would submit that the plaintiff is not attempting to establish her possession through appointment of commissioner. He would submit that the defendant in defence has raised a plea that the plaintiff is not entitled to the entire 676 sq.ft, but she is entitled only 545 sq.ft which her father was entitled to. He would also submit that the boundaries of the suit property has also not been properly given and the linear measurements are also not given. The defendant has also claimed that the plaintiff has encroached upon 2 feet of land of the defendant's property and the suit itself is to protect the encroachment.



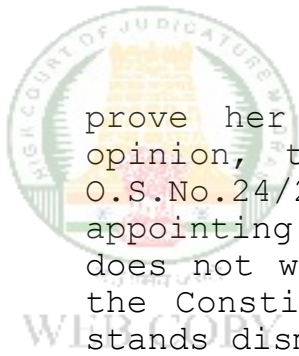
8.Mr.S.Chandrasekaran, learned counsel for the respondent also relied upon the judgment of this Court in *B.Amutha vs. Anandhi Sankara Narayanan* reported in (2016)8 MLJ 368. It is a settled law that a plaintiff in a suit for bare injunction cannot seek to establish her under possession by appointment of commissioner. If the application for appointment of commissioner is one made with an intention to prove the possession, the same will have to necessarily fail.

9.As rightly pointed out by Mr.S.Chandrasekaran, learned counsel appearing for the respondent, the present case is not one where the plaintiff is seeking to establish her possession through appointment of commissioner. As could be seen from the pleadings of the parties, the defendant admits the possession of the plaintiff to the extent of 545 sq.ft, where as the plaintiff claims that she is in possession of 676 sq.ft,. In the written statement, the defendant has also disputed the linear measures and the boundaries set out in the plaint.

10.It could also be seen that the defendant in the written statement has raised an issue regarding the correctness of the boundaries in the description of the property and the extent of the property. It is therefore clear that the dispute between the parties is not with regard to the actual physical possession but with regard to the area or extent of the property in which the plaintiff is in possession. Both the parties have pleaded that there is a common pathway on the western side of the property. While the defendant has included the said common pathway, the plaintiff would contend that the defendant has encroached the pathway. These pleadings by themselves justify a need for an appointment of commissioner to ascertain the physical features, the lie of the property, the extent of the pathway and the extent of the alleged encroachment if any, in order to decide the grant of injunction or otherwise in the suit.

11.The judgment relied upon by Mr.A.B.Prabhakar, learned counsel appearing for the petitioner, reported in 2008(5)CTC 181 may not apply to the facts of the present case, since the plaintiff is not seeking to establish her possession by appointing commissioner. The plaintiff claims title under the settlement deed said to have been executed by her father on 18.01.2010. She seeks to establish the physical features of the property, the nature and the existence or otherwise in the pathway on the west of the property, by filing an application in I.A.No.374 of 2012 seeking to appoint commissioner.

<https://hcservices.courts.gov.in/hcservices/> I do not think that this can be termed as an attempt to



prove her possession through a commissioner. In my considered opinion, the order dated 30.07.2013 made in I.A.No.374/2012 in O.S.No.24/2010, on the file of District Munsif Court, Madurai Taluk, appointing a commissioner does not suffer from any irregularity and does not warrant any interference particularly under Article 227 of the Constitution of India. The Civil Revision Petition fails and stands dismissed. No costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

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To

The District Munsif, Madurai.

+1 CC to M/s.S.CHANDRASEKARAN, Advocate ( SR-103299[F] dated 04/12/2019 )

**C.R.P (MD) .No.2150 of 2013**

**02.12.2019**

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