



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2019

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (PD) (MD) No.193 of 2019

and

CMP (MD) No.of 2019

R.Chellakkannu

...Petitioner/Petitioner/Defendant

vs.

Karthick

...Respondent/Respondent/Plaintiff

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.1056 of 2018 in O.S.No.1224 of 2018 dated 21.12.2018 on the file of the Hon'ble District Munsif Court, Trichirappalli.

For Petitioner : Mr.B.Saravanan

For Respondent : Mr.D.Deenadhayalan

ORDER

Against the order of the Court below appointing advocate commissioner to note down the physical features of the suit property, this revision is filed by the defendant.

2.The facts of the case are that the respondent/plaintiff filed O.S.No.1224 of 2018 on the file of the District Munsif Court, Trichirappalli, for permanent injunction. Pending suit, the respondent/plaintiff filed a petition for appointment of advocate commissioner to inspect the suit property and take measurements with the help of qualified surveyor and to note down the physical features of the suit property. The Court below allowed the said petition by appointing an advocate commissioner, against which, the defendant has filed this revision.

3.Learned counsel for the petitioner would submit that the suit is only for permanent injunction and there is no pleading to the effect that the respondent disputed the boundaries of the suit property and without even considering as to why the suit property has to be measured, the Court below has mechanically allowed the commissioner application. The learned counsel drew the attention of this Court to paragraphs 16 to 20 of the averments in the commissioner application and submitted that reading of the above paragraphs would clearly indicate that appointment of advocate commissioner is sought only to prove possession. Thus, he prayed for allowing this revision petition.



4. Learned counsel for the respondent would submit that after perusing the affidavit of the respondent in the commissioner application and finding that balance of convenience is in favour of the respondent, the Court below in the interest of justice has rightly ordered for appointment of advocate commissioner which does not require any interference by this Court.

5. Heard the learned counsel for the petitioner as well as the respondent.

6. The paragraphs 16 to 20 of the commissioner application are extracted below:-

'16. The defendant is enormously strangers to the suit properties. He has no manner of right, interest, title or possession over the suit properties at any position of time. The said properties have been in possession and enjoyment of the plaintiff and their predecessor for the past 68 years. With a view to encroach upon and grab the suit properties from the plaintiff, the defendant is making frequent attempts to interfere with the peaceful possession and enjoyment of the suit properties and they are trying to trespass into the suit property. One such attempt was made on 07.12.2018 and it was successfully thwarted by the plaintiffs and general public. But the defendants, being influential and wealthy persons are indulging in influencing the police personnel by illegal means. The complaint to the police proved futile. Therefore, the plaintiff has no other alternative relief except to file a suit before the court for permanent relief.

17. It is humbly submitted that the defendant has no manner of right or interest over the property belonging to me.

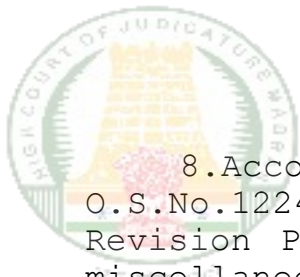
18. It is humbly submitted that the respondent/defendant has no manner of right or interest over the property belonging to the petitioner.

19. It is reiterated that the plaintiff's possession cannot be disturbed by anybody, much less by the defendant.

20. The status quo has to be preserved.

21. The balance of convenience is in favour of the plaintiff.'

7. Reading of the above paragraphs would clearly indicate that the commissioner appointment is sought only to prove the possession and possession cannot be proved by way of appointing advocate commissioner which is the dictum laid down by this Court. All the more, it is the suit for injunction and possession of the plaintiff over the suit property on the date of suit is relevant and the same can be proved only by way of documentary and oral evidence. The learned Judge has also not stated any reason as to what made him to pass the order to appoint advocate commissioner and therefore, I am inclined to interfere with the impugned order.



8. Accordingly, the order passed in I.A.No.1056 of 2018 in O.S.No.1224 of 2018 dated 21.12.2018, is set aside and this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (A.E)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The District Munsif,
Trichirappalli.

2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.B.Saravanan, Advocate, Sr.No.70762.

+1Cc to Mr.S.Deenadhayalan, Advocate, Sr.No.70869.

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CS: (02/07/2019) 3P 6C