



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAMC.R.P.(PD) (MD) No.295 of 2019andC.M.P.(MD)No.1440 of 2019

WEB COPY

Iruthayakani

... Petitioner /
Petitioner /
Plaintiff

Vs.

1.Vijayalakshmi
2.Vaithiyanathan... Respondents /
Respondents /
Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decree order dated 03.12.2018 made in I.A.No.248 of 2018 in O.S.No.127 of 2013 on the file of the District Munsif cum Judicial Magistrate Court, Cheranmahadevi.

For Petitioner : Mr. J.Parekhkumar

O R D E R

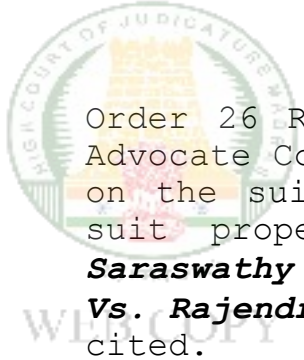
This Civil Revision Petition has been preferred by the petitioner, who is the plaintiff in the suit, against the fair and decree order, dated 03.12.2018 made in I.A.No.248 of 2018 in O.S.No.127 of 2013 on the file of the District Munsif cum Judicial Magistrate Court, Cheranmahadevi.

2.The petitioner herein as plaintiff in the suit contended that she has filed the suit for the relief of declaration, declaring that the suit schedule properties are originally belonging to the plaintiff and for permanent injunction stating that the suit properties are originally belonging to one Ramalinga Adaviar and that he sold the same to one Palniyandi under a registered sale deed, dated 19.12.1950 and that one Muthiah Thevar had purchased the same under a registered sale deed, dated 07.11.1960 and thereafter, the petitioner herein/plaintiff's husband purchased the same on 14.09.1988 under a registered sale for valid consideration and the petitioner got the suit property under a registered settlement deed, dated 20.08.2013 and that it is in possession and enjoyment of the petitioner and her predecessor more than 60 years and since the defendants are disturbing the plaintiff's possession, the suit has been filed.

3.The respondents herein/defendants had filed their written statement in the above said suit and disputing the right of the plaintiff on the suit properties and also disputing the identification of the suit properties.

<https://hcservices.ecourts.gov.in/hcservices/>

4.Therefore, the petitioner herein had filed a petition under



Order 26 Rule 9 of the Code of Civil Procedure for appointing an Advocate Commissioner to measure and note down the physical features on the suit properties with the help of surveyor to identify the suit properties. The petitioner also relied upon judgment in **Saraswathy Vs. Viswanathan** reported in (2002) 2 MLJ 133, **Shreepat Vs. Rajendra Prasad and others** reported in (2000) 3 MLJ 84 (S.C) are cited.

5.The trial Court after appreciating the evidence on both side, dismissed the petition to appoint an Advocate Commissioner on the ground that there is no valuable reasons to come forward with the petition by the plaintiff.

6.Aggrieved against the dismissal order, the petitioner herein/plaintiff come forward with this Civil Revision Petition.

7.Heard the learned counsel for the petitioner.

8.A perusal of the records reveals that the trial Court has dismissed the appeal on the ground that the plaintiff herself has not proved her claim by way of evidence and documents, hence, the purpose of the Commissioner in measuring the property will not serve any purpose unless primarily the petitioner herein/plaintiff has bounden duty to prove her possession and enjoyment of the property. Hence, the dismissal order is very much passed on the facts and I do not find any reason to interfere with the case and the same is liable to be dismissed.

9.Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The District Munsif cum Judicial Magistrate,
Cheranmahadevi.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1cc to Mr.J.PAREKH KUMAR, Advocate, SR.No. 60704

C.R.P.(PD) (MD) No.295 of 2019

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KK/SAR/15.05.2019/ 2P- 5C