



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

WEB COPY

CRP (MD) .No.549 of 2019 (PD)

and

C.M.P. (MD) .No.2721 of 2019

Arulmigu Vittoba Bajanai Mada
Kudummba Arakkattalai
Rep by its Secretary,
Mr.N.Selvaraj
S/o. Nagaraj Naidu,
694, Santhanathapuram 2nd Street,
Pudukottai.

... Revision Petitioner/
Petitioner/Plaintiff

Vs.

Ethiraj (Died)
1.Selvaraj
2.Janardhanan
3.Narasimman
4.Hariharan

... Respondents/Respondents/
Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 12.02.2019 in I.A.No.42 of 2019 in O.S.No.322 of 2008 on the file of the learned District Munsif (Full Additional Charge), Pudukottai.

For Petitioner : Mr.VR.Shanmuganathan

ORDER

This Civil Revision Petition has been preferred against the fair and decreetal order, dated 12.02.2019, passed in I.A.No.42 of 2019 in O.S.No.322 of 2008, by the learned District Munsif (Full Additional Charge), Pudukottai.

2.The revision petitioner as plaintiff, has filed a suit in O.S.No.322 of 2008 for permanent injunction and costs. In the said suit, the revision petitioner/plaintiff has stated that the cause of action arose on 14.09.2008 and on subsequent dates, the defendants making attempts to encroach the suit property. It is further stated that the plaintiff is a registered private family Trust under Societies Registration Act and the suit property is administered by the plaintiff Trust. The defendants are the adjacent owners of the



3.The respondents, who are the defendants in the suit, have filed a counter affidavit stating that in the year 1972 one Nagarajan Naidu, Narayanasamy Naidu and Venkatachala Naidu, were acted as Trustees of plaintiff Trust and thereafter, in the year 1987, when the plaintiff's father Nagarajan Naidu was acted as a Trustee, one resolution was passed that the property tax of the said Trust need not stand in one individual's name and the said tax should stand in the name of the Trust. It is further stated that the suit was filed by the plaintiff's family to make unlawful gain from the property and the first defendant is the son of one Krishnan Naidu and he only conducting the poojas in the said Trust property. Further, the plaintiff has filed I.A., under Order 26 Rule 9 of the Code of Civil Procedure, for appointment of an Advocate Commissioner to survey and measure the suit property and note down the physical features of the said property and submit his report.

4.In the said I.A, the plaintiff has stated that the defendants 2 to 5 are residing near the suit property and they have encroached the suit property and formed a pathway and hence, the necessity arises for him to appoint an Advocate Commissioner to measure the suit property with the assistance of surveyor and also to note down the physical features and file a report. The defendants 2 to 5 are the sons of the first defendant.

5.In the counter statement the defendants have objected the said facts stated in the said I.A. There is much controversial facts made by the petitioner and there are lot of contradictions also. In the plaint, the plaintiff has stated that there is one building and a vacant site, are the suit property, but in the said I.A., it is stated that there is a pathway. When the plaintiff claims the relief of injunction, who also filed a petition for recovery of possession, the exact portion of the suit property has not been clearly stated by the plaintiff.

6.The trial Court, after considering the contentions raised by both sides and upon perusal of the records, dismissed the said I.A. Aggrieved against the said I.A., the present Civil Revision Petition has been filed.

7.In the suit, the plaintiff has stated the description of the property, which is an extent of 2880 S.Ft., in T.S.No.5692 with four boundaries. It is further stated by the plaintiff that the northern boundary is the defendant's property, which lies in T.S.No.5693 and the clear averments of the respondents is that the plaintiff has not clearly stated the exact nature of the suit property in the description of property. It is only stated that the total extent is 2880 Sq.Ft., and the plaintiff has not stated anything about the exact measurement of the vacant site and simply stated that a terraced, building and a vacant site. The extent of construction made and the measurement of the vacant site has not been clearly stated by the plaintiff and only the plaintiff claims that the



defendants are interfering with the peaceful possession.

8. Even though, the suit is of the year 2008 and the plaintiff became the Secretary of the said Trust at a later point of time and the defendants also claim that they are the members in the said Trust and doing the pooja, the plaintiff should have come forward with the exact details with regard to the description of the property, while filing the suit filing and further the said I.A., has been filed very belatedly, without sufficient proof and the relevant documents regarding the exact extent of construction made and the vacant site. Further, in a sit filed in the year 2008 for the relief of bare injunction, the plaintiff has come forward with the present I.A., seeking appointment of Advocate Commissioner in the year 2019, which shows that the plaintiff wants to drag on the proceedings, as rightly observed by the trial Court. It is also pertinent to note that in a bare injunction suit by way of filing this application for appointment of Advocate Commissioner, the petitioner/plaintiff tries to collect evidence, which is not permissible in law. Therefore, there is no error in the order passed by the trial Court, which does not require any interference.

9. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

Sub Assistant Registrar(CS)

To

The District Munsif, Dindigul.

Copy To: The Record Keeper, VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.VR.SHANMUGANATHAN, Advocate in SR-55420

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PK/12.04.2019 : 3P/5C