



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2019

CORAM:

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THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM**C.R.P. (PD) (MD) No.8 of 2019****and****C.M.P. (MD) No.39 of 2019**

S.Syed Masood Mavuther

... Petitioner/plaintiff

-vs-

The President,
Pottalpudut Panchayat Union,
Main Road, Pattalpudur Village,
Ambasamudram Taluk,
Tirunelveli District.

...Respondent/ defendant

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 27.09.2018 passed in I.A.No.672 of 2018 in O.S.No.174 of 2017 on the file of the Additional District Munsif Court, Ambasamudram, Tirunelveli District and allow the present civil revision petition.

For Petitioner : Mr.R.J.Karthick

For Respondent : Mr.M.Karuppasamy

ORDER

This civil revision petition has been filed by the petitioner against the fair and decreetal order passed by the Additional District Munsif Court, Ambasamudram, Tirunelveli District in I.A.No.672 of 2018 in O.S.No.174 of 2017.

2. I.A.No.672 of 2018 was filed by the petitioner seeking appointment of an Advocate Commissioner along with Surveyor to measure the property in question and to file a report along with a rough sketch. The respondent in the counter statement in the said IA, has averred that there is an encroachment in Survey No.519 (part), R.Survey No.611(3). It is stated that steps were taken by the revenue officials for assessing, whether there are any encroachment in the Amabsamudram area and there was also a proceedings by the revenue officials in this regard. It is found that the son of the complainant namely Mideen Pitchai has encroached the property and he was also issued with a notice for removal of



such encroachment. But there was no reply from the said Mideen Pitchai.

3. Further, it is also averred that the suit is filed only for the purpose of creating documents for the unlawful possession made by the plaintiff, who has encroached the land and by filing the claim application he wants to strengthen the case. The other aspect raised in the counter statement is that the suit is filed not to fix the boundary but only to seek injunction against the respondent not to made any construction for shelter.

4. The trial Court after verifying the relief sought by the plaintiff and also the documents filed by the plaintiff / the petitioner herein, has given a finding that the petitioner has filed a suit for injunction against the respondent and not for fixing any boundary in his property and the purpose of filing an application for appointment of an Advocate Commissioner is only to create records in favour of the plaintiff for claiming right in the property belongs to the Government. Since it has been clearly discussed that the relief sought in the suit and the purpose of filing an application for appointment of an Advocate Commissioner is contrary, the trial Court assessing all these facts and also the averments stated in the counter statement by the respondent, has dismissed the said application. Aggrieved against the said dismissal, the petitioner / plaintiff has filed the present petition.

5. Heard the learned counsel on either sides and also perused the materials available on record.

6. It is observed that as per the contention of the petitioner, the suit property is in his possession and enjoyment for a very long time. The shelter, which is proposed to construct by the respondent, obstructs the petitioner to have access to the road. Whereas the respondent contended that the plaintiff has made encroachment in the Government land and also proceedings were initiated for removal of such encroachment. Further, a direction was also given with regard to the same. Now the purpose of the suit is not to seek remedy but only to fix the boundary, filing an application to appoint an Advocate Commissioner application has no *bona fide*.

7. In view of the facts and circumstances of the case, when the petitioner / plaintiff sought only an injunction and not for fixing boundary, the application need not be considered. Further it is also observed that the suit has been filed in the year 2017, whereas the application for appointment of Commissioner has been filed in the year 2018. When it is the case of the plaintiff that the respondent attempted to put up a construction by way of obstructing the right of the plaintiff, the plaintiff would have taken these steps at the earliest point of time, even at the time filing the suit itself. Whereas this application came to be filed only in the year 2018. The status of the property can be verified, if the trial



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Court finds it appropriate. Accordingly, this civil revision petition is devoid of merits and the same stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Writs)

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Sub Assistant Registrar(CS)

To:

The Additional District Munsif Court,
Ambasamudram, Tirunelveli District

+1 CC to M/s.M.KARUPPASAMY, Advocate in SR-45215

+1 CC to M/s.R.J.KARTHICK, Advocate in SR-45350

C.R.P. (PD) (MD) No.8 of 2019

06.02.2019

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PK/12.04.2019 : 3P/4C