



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.06.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) No.873 of 2019

and

C.M.P (MD) No.5112 of 2019

Ganapathy

.. Petitioner/
Plaintiff

Vs.

Rajasingam

.. Respondent/
Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 12.04.2019 made in I.A.No.428 of 2018 in O.S.No.68 of 2017 by the Principal District Munsif Court, Manamadurai.

For petitioner : Mr.V.P.Rajan

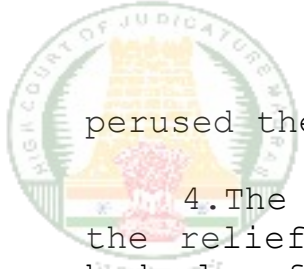
ORDER

The petitioner / plaintiff has filed the suit in O.S.No.68 of 2017 for the relief of permanent injunction in respect of the suit property. The respondent / defendant has also filed his written statement. Pending suit, the petitioner / plaintiff filed I.A.No.428 of 2018 seeking appointment of an Advocate Commissioner to measure the suit property with the help of revenue officials and file his report and plan. The Court below dismissed the same, against which, the present civil revision petition has been filed.

2.The learned counsel for the petitioner / plaintiff would submit that the father of the petitioner / plaintiff and the father of the respondent / defendant are the sons of one Aathimoolam Servai. There was a partition among the five sons of the said Aathimoolam Servai by way of a partition deed dated 29.07.1968 and the suit property, which falls under 'C' schedule in the partition deed, was allotted to the share of the father of the petitioner / plaintiff and after his demise, the petitioner / plaintiff and his brother one N.Dhanasekaran are in joint possession and enjoyment of the same. The petitioner / plaintiff filed the commission petition to note down the boundaries of the suit property with the help of revenue officials so as to know the real status of 'C' schedule property in the partition deed and his possession over the same. The Court below has erroneously dismissed the same. Thus, he prayed to set aside the order passed by the Court below.

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

3.Heard the learned counsel for the petitioner / plaintiff and



perused the materials available on record.

4.The petitioner / plaintiff has filed O.S.No.68 of 2017 for the relief of permanent injunction. The respondent / defendant had also filed his written statement. The petitioner / plaintiff claims title over the suit property mainly on the basis of the partition deed dated 29.07.1968, in which, the suit property has been shown as 'C' schedule and the same has been allotted to the share of his father.

5.Perusal of records would show that when the suit was posted in the special list, the petitioner / plaintiff has filed this commission petition stating that the suit property is under his possession and enjoyment and in order to know his possession and status of the suit property, appointment of Advocate Commissioner is necessary. The main dispute in the suit is with regard to the extent allotted to the co-sharers in the partition deed and the same could be known only through the oral and documentary evidence. The possession could be only to the extent allotted to the share of the father of the petitioner / plaintiff and the respondent / defendant cannot claim any extent apart from the share allotted to his father. The defendant's mother had purchased the share of one of the sons of Aathimoolam Servai, viz., P.A.Subramanian Servai, who was allotted 'B' schedule in the partition deed. Since the allotment, extent and possession could be known from the partition deed and the extent allotted to the co-sharers in the partition deed could be known through the oral and documentary evidence, there is no necessity for appointment of an Advocate Commissioner to know about the status of the properties. Further, the petitioner / plaintiff filed the suit only for the relief of permanent injunction on the ground that he is in possession of the suit property, which could be substantiated through the oral and documentary evidence. But, the petitioner / plaintiff without adducing any oral and documentary evidence to substantiate his claim, has filed the present petition to gather evidence in his favour. The learned Judge after considering the above, has rightly dismissed the petition. In my considered opinion, there is no infirmity in the order passed by the learned Judge in dismissing the commission application. Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)



To

1.The Principal District Munsif Court,
Manamadurai.

2.The Record Keeper,-2 copies
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

smn

ORDER MADE IN
C.R.P (MD) No.873 of 2019
and
C.M.P (MD) No.5112 of 2019
24.06.2019

KM/ (05.07.2019) 3P 4C