



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.07.2019
CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

WEB COPY

C.R.P.(PD) (MD) .No.1081 of 2019
C.M.P. (MD) .No.5896 of 2019

M.Ponniah .. Petitioner/Petitioner

Vs.

1.Seasammal
2.R.Mary Pushpam .. Respondents/Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.576 of 2018 in O.S.No.200 of 2013 on the file of the II Additional Subordinate Judge, Nagercoil, dated 20.02.2019.

For Petitioner : Mr.C.K.M.Appaji

For Respondents : Mr.K.P.Narayana Kumar

ORDER

This civil revision petition is directed against the order passed by the learned II Additional Sub Judge, Nagercoil, in I.A.No.576 of 2018 dismissing the petition filed by the revision petitioner for appointment of an Advocate Commissioner.

2.The revision petitioner as plaintiff filed a suit in O.S.No.200 of 2013 for cancellation of the sale deed, dated 09.07.2007 before the Sub Registrar's Office, Vadaseri and for permanent injunction restraining the defendants in the suit from interfering with the possession of the petitioner. The suit was contested by the defendants. The title and possession of the petitioner was disputed in the written statement. It is in the circumstances, the petitioner filed the application for appointment of Advocate Commissioner in I.A.No.576 of 2018. Even in the affidavit filed in support of the petitioner, the petitioner states as follows:

"11.To prove the possession and the enjoyment of the petition scheduled property it is highly necessary to appoint an Advocate Commissioner for Local Investigation and for report in this case.

12.The appointment of a Court Commissioner is essential and material in the nature of the suit.



If not the evidence would not fulfilled and the petitioner/plaintiff would be put into irreparable loss and hardship."

3. It is well settled that an Advocate Commissioner cannot be engaged for proving one's possession. The suit for injunction is filed on the basis of the petitioner's title and hence the burden lies on him to prove his title and possession. The suit for injunction can also be dismissed on any other ground since the relief being equitable. The lower court has dismissed the application by holding that the Advocate Commissioner cannot be appointed to collect evidence and to note down the plaintiff's possession over the plaint scheduled property. The suit property is an extent of 57 cents in old S.No.952/A correlated to Re.Sy.No.583/4 of Vadasery Village. The suit property has been conveyed under registered sale deed which is dated 09.07.2007 and the relief prayed for in the suit is also to cancel the sale deed. In such circumstances, this Court is of the view that the order of lower Court warrant no interference and the plaintiff cannot seek assistance of an Advocate Commissioner to prove the factum of possession over the plaint schedule property.

4. As a result, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The II Additional Sub Judge, Nagercoil.

Copy to :

The Section Officer, E.R/V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1cc to Mr.K.P.NARAYANAKUMAR, Advocate, SR.No.76517

TM

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NA (31.07.2019) 2P : 5C