



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.10.2019

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P. (PD) (MD) .No.400 of 2019
and
C.M.P. (MD) .No.1974 of 2019

Pramkumari

... Petitioner

Vs.

Kamala

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order made in I.A.No.540 of 2018 in O.S.No.170 of 2017, dated 22.11.2018 on the file of learned District Munsif Court, Tiruchendur, Tuticorin District.

For Petitioner : Mr.T.R.Jenarthanan

For Respondent : Mr.T.Senthilkumar

O R D E R

The Civil Revision Petition has been filed challenging the order passed by the District Munsif Court, Tiruchendur, Tuticorin District in I.A.No.540 of 2018 in O.S.No.170 of 2017, dated 22.11.2018.

2. The application in I.A.No.540 of 2018 has been filed by the revision petitioner herein for appointment of an Advocate Commissioner to inspect the suit property and note down the physical features to ascertain the damages. The Court below has dismissed the above application stating that it is for the plaintiff to prove his ownership and possession of the property. Further, the Court below has held that identity of the property is not in question and it is not necessary to appoint the Advocate Commissioner, that too after the examination of P.W.1 and after marking Exs.A1 to A27.

3. The learned counsel for the revision petitioner would contend that the Interlocutory application was filed for appointment of the Advocate Commissioner to inspect the suit property and note down the physical features to ascertain the damages. But, without considering the matter on merits, the Court below has dismissed the



application. Challenging the same, the present revision petition has been filed.

4. On the other hand, the learned counsel for the respondent would contend that it is for the respondent/plaintiff to prove her case and P.W.1 was examined and Exs.A1 to A27 were also marked. He would further contend that the identity of the property is not in question and the Court below has rightly dismissed the application for appointment of Advocate Commissioner.

5. Heard the leaned counsel on either side and perused the materials available on record.

6. The suit in O.S.No.170 of 2017 has been filed by the respondent/plaintiff for declaration and permanent injunction. That being the case, it is for the respondent/plaintiff to establish her case by producing necessary documents and examining the parties. Further, as rightly contended by the learned counsel for the respondent that the revision petitioner/ defendant is not questioning about the identity of the property. Therefore, it is not necessary to file an application before the Court below for appointment of the Advocate Commissioner to inspect the suit property and note down the physical features to ascertain the damages. If at all if there is any damages occurred in his property, it is for the revision petitioner/defendant to take action against the respondent/plaintiff. Without doing that, he is not entitled to file an application and it is for the plaintiff to establish her case. Therefore, the Court below has rightly considered all these aspects and dismissed the application and there is no infirmity in the order passed by the Court below. Hence, the Civil Revision petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-I)

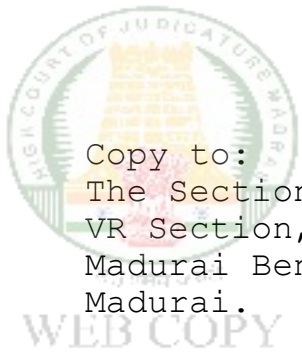
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Sub Assistant Registrar(CS)

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To

The District Munsif Court,
Tiruchendur,
Tuticorin District.



Copy to:
The Section Officer, (2 Copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.SENTHIL KUMAR, Advocate (SR-93440[F] dated 22/10/2019

C.R.P. (PD) . (MD) .No.400 of 2019
21.10.2019

JMN(20.11.2019) 3P : 5C