



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE **R. PONGIAPPAN**

CRP(MD) No.1194 of 2019
and
C.M.P(MD) No.6659 of 2019

The Kailas Rubber Company Limited,
Registered Office at Anchiril Bank Building,
Kottayam,
Rep. By its Manager,
Palalai Estate,
Pechiparai Post,
Kaliyal Village, Vilavancode Taluk,
Kanyakumari District.

... Petitioner

versus

R.Velayudhan

... Respondent

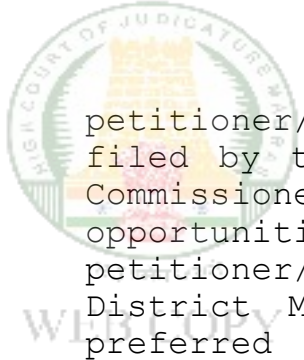
Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 02.07.2019 passed in I.A.No.158 of 2018 in O.S.No.181 of 2013 on the file of the 2nd Additional District Munsif Court, Kuzhithurai.

For Petitioner : M/s.V.M.Balamohan Thampi

ORDER

The petitioner is the defendant in O.S.No.181 of 2013, pending on the file of the Second Additional District Munsif Court, Kuzhithurai.

2. Before the trial Court, the respondent/plaintiff filed a suit as against this petitioner/defendant for the relief of injunction simplicitor. In fact, the said suit has been filed in the year 2013. At the time of filing the suit, the respondent/plaintiff filed an application to appoint an Advocate Commissioner to note down the physical features of the suit property. On the application filed by the respondent/plaintiff, the learned Second Additional District Munsif, Kuzhithurai, appointed an Advocate Commissioner and thereafter, on 19.11.2013, the Advocate Commissioner submitted his report. Thereafter, after filing objection on 07.02.2016, the Advocate Commissioner, who visited the suit property, examined as a witness and the cross examination was also completed. In the meantime, in the year 2018, the



petitioner/defendant herein filed an application to scrap the report filed by the Advocate Commissioner and to appoint a new Advocate Commissioner for visiting the suit property. After affording opportunities to either side, the said application filed by the petitioner/defendant was dismissed by the learned Second Additional District Munsif, Kuzhithurai, against which, the petitioner has preferred this Civil Revision Petition, praying to set aside the order passed by the learned Second Additional District Munsif, Kuzhithurai.

3. It is the contention of the learned counsel appearing for the petitioner that before the disposal of the suit, at any time, the Court may appoint an Advocate Commissioner for the purpose of better adjudication. In support of his contention, the learned counsel has also relied upon the Judgment of this Court reported in **1996 MLJ 426 (Vemba Gounder vs. Pooncholai Gounder)**.

4. Of course, it is true that the trial Court is having power to appoint an Advocate Commissioner even after examining both sides' evidence. However, on considering the facts and circumstances of this case, it is clear that the suit is filed for the relief of permanent injunction. The crux of the matter to be decided in the suit filed by the respondent/plaintiff is, how much of loss caused due to harvesting of 500 banana trees. In fact, the said occurrence had happened in the year 2013. So, it is impossible to calculate the damages after three years from the date of occurrence. So, the facts and circumstances related to this case is entirely different from the case, which is relied upon by the learned counsel for the petitioner. However, the remedy available to the petitioner is only to file an application to revisit the suit property and not to scrap the report filed by the Advocate Commissioner after examining him as a witness. Hence, I am of the considered opinion that the petition filed by the petitioner is not at all having any merits.

5. In fine, the Civil Revision Petition is dismissed, with liberty to the petitioner to file an application to revisit the suit property by the same Advocate Commissioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)



To

1. The 2nd Additional District Munsif Court,
Kuzhithurai.

Copy to: The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.V.M.BALAMOHAN THAMBI, Advocate SR-77899.

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CS(16.08.2019) 3P 5C