

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition (PD) No.3498 of 2015

and

M.P.No.1 of 2015

1.Ravi @ Ravikumar
2.Raj @ Venkatraj
3.Muthappa Chetty
4.Ramachandran
5.Nagarajan

..Petitioners/defendants

Vs

V.Shanmugam

..Respondent/Plaintiff.

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, seeking to set aside the fair and decreetal order dated 07.04.2015 made in I.A.No.202 of 2005 in I.A.No.1093 of 2004 in O.S.No.410 of 2004 on the file of the learned District Munsif Court, Sankari.

For Petitioners : Mr.N.Manokaran

For Respondent : Mr.P.Jagadeesan

ORDER

The petitioners herein are the defendants in O.S.410 of 2014. The respondent herein is the plaintiff in the said suit. The respondent herein filed the suit in O.S.No.410 of 2014 for permanent injunction and the

same is pending.

2. Petitioners herein filed application in I.A.No.202 of 2015 in I.A.No.1093 of 2004 for appointment of Advocate Commissioner to prove the possession and collect evidence. The respondent/plaintiff resisted the said application and the learned trial judge, after hearing arguments, dismissed the petition. Challenging the said order passed by the trial court, the petitioners herein, who filed the said I.A.No.202 of 2005 has filed the present revision.

3. The learned counsel for the petitioners submits that there are two suits; one suit for declaration and the present suit is filed by the respondent/plaintiff for bare injunction. Both the suits are tagged for joint trial. At that point of time, the petitioners filed application in I.A.No.202 of 2005 praying for appointment of Advocate Commissioner. The sole respondent herein is the plaintiff in O.S.No.410 of 2004. The petitioners herein are the defendants in the said suit, filed application seeking appointment of Advocate Commissioner, to ascertain the portico extended in the suit property and to measure the suit property and other physical features. However, the learned trial judge failed to take into consideration the above factors and dismissed the said petition, therefore, prays for interference of this court.

4. The learned counsel for the respondent submits that the respondent herein filed O.S.No.410 of 2004 for bare injunction. In the said suit, Advocate Commissioner cannot be appointed. There is no need for measuring the property or identifying the property as it can be easily ascertained. The respondent/plaintiff has not proved its title in respect of Survey No.661/11. The trial judge has rightly held that no document has been filed on either side and further existence of portico has to be proved either by filing document or by way of oral evidence and it cannot be proved on the basis of advocate commissioner's report. The said finding does not warrant any interference.

5. Heard both sides and perused the records carefully.

6. Admittedly, the suit in O.S.No.410 of 2004 has been filed by the respondent herein. The suit is for bare injunction. In that suit, he has also filed application in I.A.No.1093 of 2004 for temporary injunction. During the pendency of the suit and injunction application, the petitioners herein had filed the application in I.A.No.202 of 2005 for appointment of Advocate Commissioner. Though the contention of the petitioners/defendants is that the petitioners also filed suit in O.S.No.395 of 2004 for declaration and the same is also pending and

both the suits are ordered for joint trial and therefore, the petitioners filed the petition in I.A.No.202 of 2005 in O.S.No.410 of 2004 and it is maintainable, it is to be seen that though the petitioners also filed yet another suit in O.S.No.395 of 2004 and the same is also pending which suit is for declaration, the petitioners have not filed any petition for appointment of Advocate Commissioner to note down the physical features in the said suit. However, the petitioners had filed application seeking appointment of advocate commissioner in the present suit in O.S.No.410 of 2004, which suit is filed for bare injunction.

7. It is well settled principle of law that in a suit for bare injunction, appointment of Advocate Commissioner cannot be ordered either to prove the possession or collect the evidence. Therefore, under these circumstances, considering the facts and circumstances of the case, following the well settled proposition of law laid down by the Honourable Apex Court and this court in various decisions to the effect that Advocate-Commissioner cannot be appointed for making an enquiry about factum of possession of the property in dispute since the same has to be adjudication upon framing issues and on appreciation of evidence, this court does not find any perversity in the order passed by the trial court, rejecting the application filed by the revision petitioners herein. Therefore, there is no merit in the revision and the same is

liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
nvsri

To

- 1.The District Munsif Court, Sankari.
- 2.The Section Officer, V.R. Section, High Court, Madras.

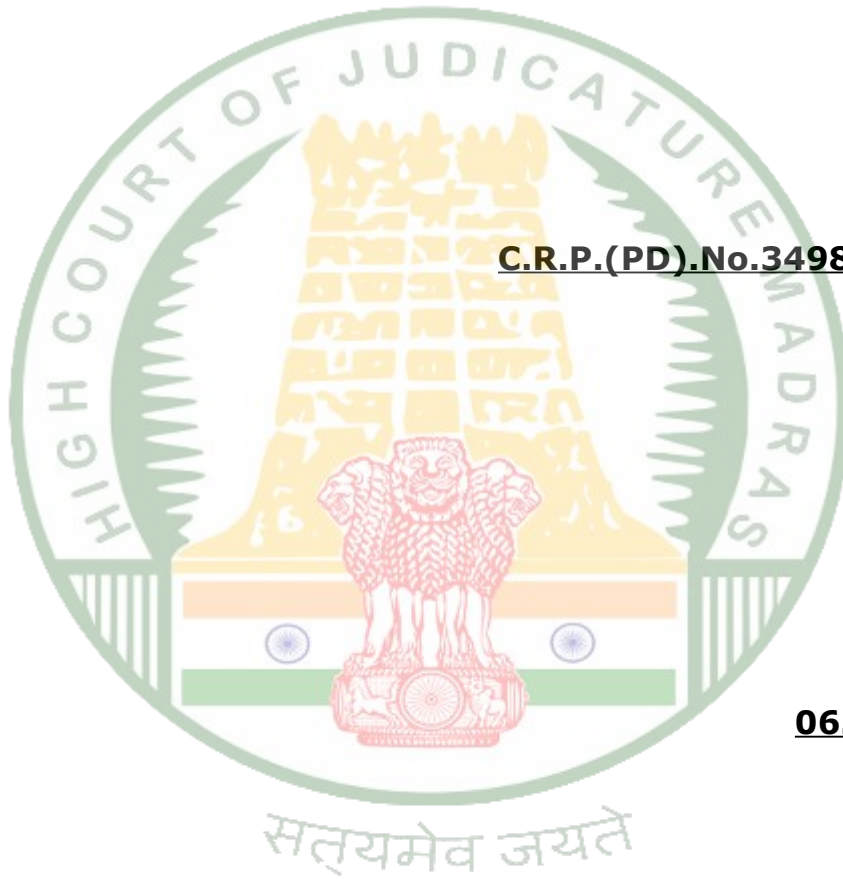


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P.VELMURUGAN,J.

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