

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2020

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.(PD)No.877 of 2020
and C.M.P.No.4671 of 2020

1.Selvam
2.Thulasingham

... Petitioners/Defendants

versus

Subbalakshmi

... Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed by the learned District Munsif, Tambaram in I.A.No.204 of 2019 in O.S.No.282 of 2009 dated 14.10.2019.

For Petitioners : Mr.P. Chandra Mohan

For Respondents : -----

ORDER

This Civil Revision Petition has been filed by the petitioners/defendants seeking to set aside the fair and decretal order passed by the learned District Munsif, Tambaram, in I.A.No.204 of 2019 in O.S.No.282 of 2009 dated 14.10.2019.

2. The respondent/plaintiff has filed the suit in O.S.No.282 of 2009 for permanent injunction restraining the defendants, their men, agents, servants or anyone acting on their behalf from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The petitioners/defendants had filed an Interlocutory Application No.204 of 2019 seeking for appointment of the Advocate Commissioner under Order XXVI, Rule IX of the Civil Procedure Code, to inspect the suit property. The said application was dismissed by the trial Court, Hence the present Civil Revision Petition.

3. According to the revision petitioners, the respondent/plaintiff has not furnished the correct survey number and the measurement of four sides of boundaries of the schedule

mentioned property. Therefore, appointing of Advocate Commissioner to inspect and submit the report with regard to the suit schedule property with the help of Taluk surveyor is necessary.

4. The respondent/plaintiff has filed a counter affidavit before the trial Court, stating that the aforesaid application was filed by the petitioners with malafide intention to grab the suit property and further the suit is now posted for cross examination of DW, therefore, the said application is liable to be dismissed.

5. It is seen that the respondent/plaintiff has filed the suit in O.S.No.282 of 2009 for permanent injunction restraining the defendants, their men, agents, servants or anyone acting on their behalf from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule mentioned property. In the said suit, at the time of cross examination of DW1, the revision petitioners herein have filed Interlocutory application in I.A.No.204 of 2019 to appoint Advocate Commissioner. The trial Court by considering the fact that the relief sought for in the suit is for permanent injunction and also considering the reasons stated in the application and the counter affidavit filed by the respondent/plaintiff, had dismissed the application filed by the revision petitioner herein.

6. In a decision reported in Penta Urmila and others Vs. Karukola Kumarasamy, (2005 (2)ALD 130), the court in paragraph 6 has held as follows;

6. In a suit for permanent injunction, the vital and important issue is whether the plaintiffs are in possession of the suit schedule land and whether there was attempt by the defendant/s to interfere with such possession of plaintiffs. The burden is entirely on the plaintiffs to bring convincing and cogent evidence on record and for so doing, it is not permissible for them to invoke Order XXVI Rule 9, which is intended for different purpose."

7. In the present case, the core issue of the suit is whether the plaintiff is in law full possession or not? and whether the plaintiff is entitled for permanent injunction against the defendant? Moreover the suit is now posted for cross examination of DW1. At this stage, appointing of Advocate Commissioner is not necessary and will drag the entire suit proceedings. The trial Court has rightly observed these facts and dismissed the I.A. No. 204 of 2019 filed by the revision petitioners herein.

8. Considering the facts and circumstances of the case and in view of the decision cited supra, this Court finds no reason to interfere with the order passed by the Court below. Accordingly, the Civil Revision Petition stands dismissed. No costs.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

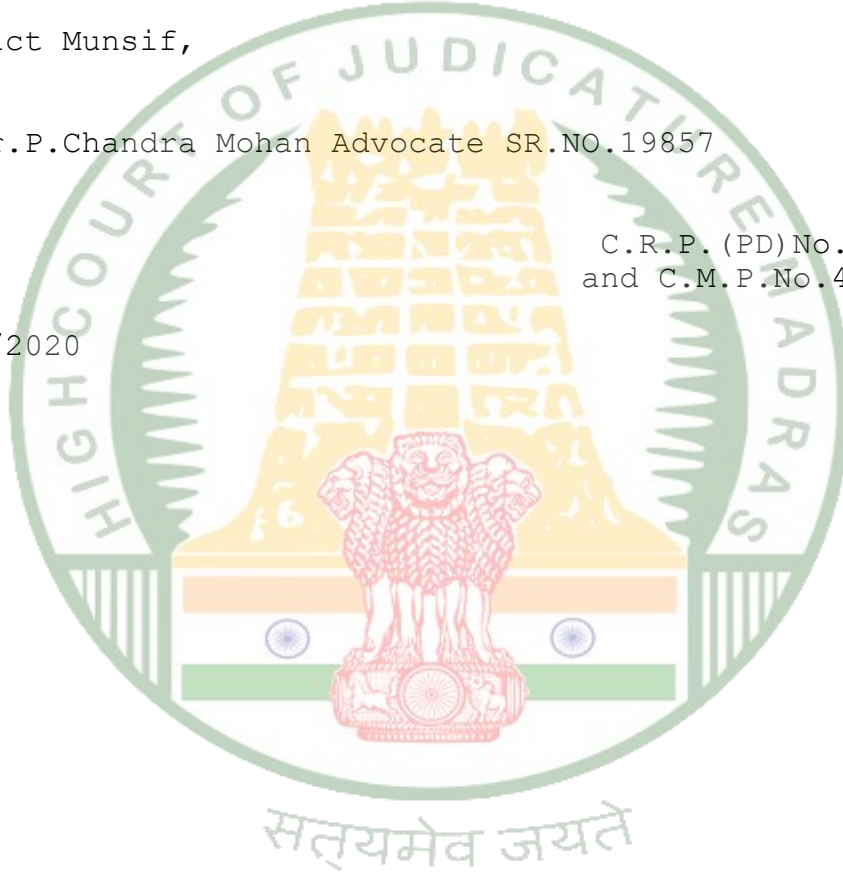
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To
The District Munsif,
Tambaram.

+1cc to Mr.P.Chandra Mohan Advocate SR.NO.19857

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