

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2020

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.(PD)No.1239 of 2020

and C.M.P.No.6702 of 2020

P.Senthil

... Petitioner/Plaintiff

versus

1.M.Devadass

2.A.Jeevarekha

.... Respondents/Defendants

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 31.01.2020 passed in I.A.No.03 of 2019 in O.S.No.237 of 2019 on the file of the Principal District Munsif Court, Namakkal.

For Petitioner : Mr.S.Senthil

ORDER

This Civil Revision Petition has been filed by the petitioner seeking to set aside the fair and decreetal order dated 31.01.2020 passed in I.A.No.03 of 2019 in O.S.No.237 of 2019 on the file of the Principal District Munsif Court, Namakkal.

2. The petitioner/plaintiff has filed a suit in O.S.No.237 of 2019 before the learned Principal District Munsif, Namakkal, for permanent injunction restraining the respondents from in any way disturbing the peaceful possession and enjoyment of the suit property. Thereafter, an interlocutory application in I.A.No.3 of 2019 in O.S.No.237 of 2019 has been filed by the petitioner/plaintiff under Order 26, Rule 9 of CPC on the file of Principal District Munsif, Namakkal, to appoint an Advocate Commissioner and to inspect the suit property and submit a report and the said interlocutory application was dismissed by the Court below by order dated 31.01.2020. Challenging the same, the present Civil Revision Petition is filed by the petitioner/plaintiff.

3. The said application was dismissed holding that the aforesaid suit for permanent injunction can be decided only by considering the oral arguments and not based on the submission that may be made by the learned Advocate Commissioner and his report, and hence, the aforesaid application cannot be entertained and the same was liable to be dismissed. The trial Court's conclusion is nothing but based on the materials available on record in respect of the suit property and in accordance with law. At this stage, it is not permissible under the law for this Court to allow the Court below to appoint the Advocate Commissioner, more particularly, when the suit is filed only for bare injunction.

4. In the light of the above reasons, the CRP is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Principal District Munsif Court, Namakkal.

+1 cc to M/s.S.Senthil,Advocate,sr.24514.

Sj(co)
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