

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 2240 of 2018

and

C.M.P.No.14060 of 2018

1. A. Selvaraj

2. T.S.Durairaj

3. T.S.Kumar

... Petitioners

Vs.

K. Bhavani

... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India, against the Fair and Decreetal Order of the Sub Court at Kallakurichi dated 16.11.2017 made in I.A.No.409 of 2017 in O.S.No.50 of 2009.

For Petitioners : Mr.P.Valliappan

For Respondent : Mr.R.Bharathkumar

ORDER

The defendants in O.S.No.50 of 2009, a suit for permanent injunction restraining them from interfering with the plaintiff's alleged possession of the suit property, aggrieved by an order appointing an Advocate Commissioner, pending suit to measure the property and note

down the physical features, have come up with this Civil Revision Petition.

2. The suit is for bare injunction. It is contended that the husband and the mother in law of the plaintiff had borrowed monies from the first defendant and the property was given as security to the first defendant. The transaction is said to have been recorded by a vardhamanam letter.(Very serious questions of validity of the said transaction would also arise). But for the purposes of this revision, I do not propose to go into the said issue which according to the learned counsel for the respondent, are very intricate questions of law. The suit is resisted by the defendants contending that they are not put in possession of the property and they are not in occupation of the any portion of the property. It is also claimed that they had offered the Vardhamanam letter as a security for the money borrowed by them from one A.R.Sampathkumar.

3. During the pendency of the suit, plaintiff came up with this application for appointment of a Commissioner, alleging that the defendants

had encroached upon the suit property during may 2011 and constructed two tin sheet sheds. Claiming that the Commissioner has to be appointed to find out the extent and the nature of the encroachment, an application was filed by the plaintiff seeking appointment of Commissioner on 22.06.2017. This application was opposed on the ground that the defendants were not in possession of any portion of the plaintiff's property and even then the application is not maintainable in a suit for permanent injunction.

4. The learned trial Judge who heard the application, appointed Commissioner to visit the property and measure the same and note down the physical features.

5. I have heard Mr.P.Valliyappan, learned counsel appearing for the petitioners and Mr.Bharathkumar, learned counsel appearing for the respondent.

6. Mr.P.Valliyappan, learned counsel appearing for the petitioners

would mount a scathing attack on the order of the trial Court, contending that in a suit for permanent injunction, where subsequent encroachment is alleged, the trial Court is not justified in appointing a Commissioner.

7. Mr.Bharathkumar, learned counsel appearing for the respondent would submit that the Commissioner has been appointed only to find out the extent and nature of the encroachment. Therefore, no interference is warranted.

8. I have considered the submissions of the learned counsel appearing for the parties. As already stated, the suit is one for permanent injunction under certain colour of title. The title of the plaintiff is conceded by the defendants even in their written statement. Therefore, it is for the plaintiff to prove possession as on the date of filing the suit, in order to succeed in the suit. Though the very application for appointment of Commissioner states that the defendants have encroached upon the plaintiff's property even in the year 2011, the application has been filed only

in the year 2017. No steps have been taken to amend the plaint even as of today. So long as the suit remains as a suit for permanent injunction, this application would be outside the scope of the very suit and therefore the trial Court has erred in allowing the application. If the plaintiff claims that the defendants have encroached upon the property pending suit, she has to take steps to recover possession upon proof of title. I therefore, see no justification in the order of the trial Court appointing an Advocate Commissioner.

9. This Civil Revision Petition is therefore allowed and the order appointing a Commissioner is set aside. I.A.No.409 of 2017 stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

21.08.2020

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Internet: Yes/No

Index: Yes/No

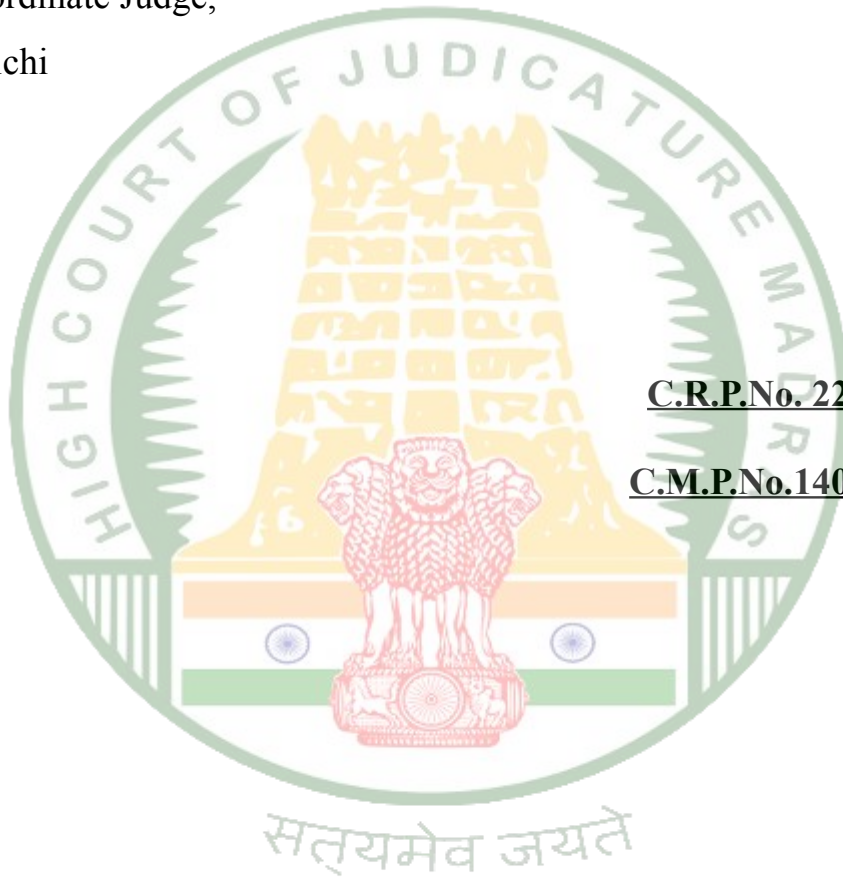
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R.SUBRAMANIAN, J.

kmm

To:-
The Subordinate Judge,
Kallakurichi



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