

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

C.R.P.(PD) No.4088 of 2018
and C.M.P.No.22595 of 2018

Kaliappan

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Petitioner/Plaintiff /
Revision Petitioner

Vs.

1. The District Collector,
Collectorate, Salem-1.

2. The Block Development Officer,
Panamarathupatty Union,
Panamarathupatty, Salem.

3. The Tahsildar,
Salem.

4. The Revenue Inspector,
Panamarathupatty Union,
Panamarathupatty, Salem.

5. The Village Administrative Officer,
Thumbalpatty.

..... Respondents/Defendants

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 11.09.2018 in I.A.No.825 of 2018 in O.S.No.358 of 2018 on the file of the I Additional District Munsif, Salem.

For Petitioner
For Respondents

: Mr.D.Shivakumaran
: Mr.Y.T.Aravind Gosh,
Govt. Advocate

O R D E R

The revision petitioner has filed a suit in O.S.No.358 of 2018 on the file of I Additional District Munsif, Salem for permanent injunction against the respondents. Written statement has been filed by the respondents/ defendants as early as in the

year 2018. The revision petitioner has filed an application in I.A.No.825 of 2018 under Order XXVI Rule 9 of C.P.C. to appoint an Advocate Commissioner to measure the suit property with the help of the qualified Surveyor and also note down the physical features of the suit property. The Court below dismissed the said application.

2 According to the learned counsel appearing for the petitioner, the suit property belongs to one Sukaramalai Gounder who executed a sale deed in favour of the petitioner's father Kuppa Gounder and after the demise of his father, the petitioner was enjoying the suit property in his own right as owner thereof being the only son of his father. Now, the respondents are interfering with the peaceful possession of the suit property. Therefore, the petitioner has filed the suit for permanent injunction. According to the learned counsel appearing for the petitioner, the aforesaid application for appointment of Advocate Commissioner to measure the suit property with the help of qualified Surveyor is necessary for the petitioner to establish his right over the suit property. Based on the report of the Advocate Commissioner, the Court below has to determine the real issue involved in the suit. However, the Court below erroneously dismissed the said application. Challenging the order of the Court below, the present Civil revision petition has been filed before this Court.

3. The learned Government Advocate appearing for the respondents would object that the petitioner ought to have filed the present application for appointment of Advocate Commissioner at the time of filing the suit. Now, filing the present application is nothing but collecting evidence. The Court below placing reliance on the decision rendered by the Hon'ble Supreme Court and this Court dismissed the said application.

4. Heard the learned counsel appearing for the petitioner, learned Government Advocate appearing for the respondents and perused the materials available on record.

5. The short point in the present Civil revision petition is whether the order passed by the Court below dismissing the application filed by the petitioner for appointment of Advocate Commissioner required interference of this Court.

6. The Court below relied on the decision of the Hon'ble Supreme Court in PADAM SEN AND ANOTHER VS. THE STATE OF UTTAR PRADESH reported in AIR 1961 SC 2018, and the decisions of this Court in GOPAL CHETTIAR (DECEASED) AND 3 OTHERS VS. P.A.A.

SAHUL HAMEED AND ANOTHER reported in 1998-3 L.W. 773 and BAKKIYAM VS. K.P.VIJAYAN reported in 2013 (1) L.W. 638, rejected the application for appointment of Advocate Commissioner.

7. Considering the prayer sought for in the suit viz., permanent injunction, the judgments cited supra, as rightly pointed out by the learned Government Advocate, the present application cannot be entertained and the Court below rightly dismissed the said application. It is for the petitioner to establish before the Court, his right over the suit property. Therefore, there is no warrant to interfere with the order of the Court below.

8. In fine, the Civil Revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

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To
The I Additional District Munsif, Salem.

+1cc to The Government Pleader, High Court, Madras,
SR.No. No.19826.

+1cc to Mr.D.Shivakumaran, Advocate, Sr.No. No.19838

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SSD(CO)
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