



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.03.2020

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P. (P.D.) (MD) .No.290 of 2020

and

C.M.P. (MD) .No.1691 of 2020

Murugan

... Petitioner/2nd Defendant

Vs.

Mohandoss

... Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 04.03.2019 passed in I.A.No.428 of 2018 in O.S.No.56 of 2018 by the learned District Munsif Court, Mudukulathur.

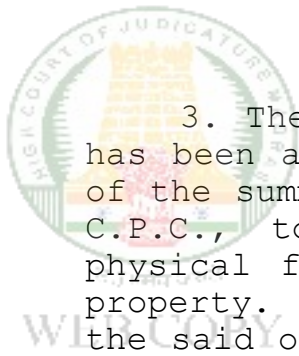
For Petitioner : Mr.K.Kumaravel

For Respondent : Mr.D.Srinivasaragavan

O R D E R

The Civil Revision Petition has been filed against the fair and decreetal order dated 04.03.2019 passed in I.A.No.428 of 2018 in O.S.No.56 of 2018 by the learned District Munsif Court, Mudukulathur.

2. The respondent herein is the plaintiff and he has filed a suit in O.S.No.56 of 2018 before the District Munsif Court, Muthukulathur, for declaration and recovery of possession in the year 2018. The petitioner herein is the second defendant in the said suit. During the pendency of the suit, the petitioner had filed an application in I.A.No.428 of 2018 before the trial Court to appoint an Advocate Commissioner to note down the physical features and also measure the suit property along with the adjacent property. The said petition was dismissed by the trial Court. Challenging the order passed by the trial Court, the petitioner/second defendant therein has come before this Court by way of this civil revision petition.



3. The learned counsel for the petitioner would submit that he has been arrayed as second defendant in the suit and after receipt of the summon, he has filed an application under Order 26 Rule 9 of C.P.C., to appoint an Advocate Commissioner to note down the physical features and measure the suit property with the adjacent property. The trial Court has dismissed the petition. Challenging the said order, the present civil revision petition has been filed. If the Advocate Commissioner is appointed and identified the property, the truth will come as to whether the plaintiff has encroached the property of the defendants or whether the plaintiff is entitled for recovery of possession, as per the sale deed. The trial Court has failed to consider the nature of the application and the purpose for which the application filed has not been considered and dismissed the application, which warrants interference by this Court.

4. The learned counsel for the respondent would submit that he has filed a suit for declaration and recovery of possession and though the petitioner has filed an application to note down the physical features and measure the suit property, he wanted to measure and note down the physical features in the property mentioned in the document filed by him, which is no way related to the present suit. Therefore, the appointment of Advocate Commissioner is not necessary and the Commissioner's Report will not help the Court to decide this case. Therefore, the trial Court has rightly dismissed the suit and no interference is required.

5. Heard the learned counsel for the petitioner, learned counsel for the respondent and perused the materials available on record.

6. Admittedly, the respondent is the plaintiff and he has filed a suit in O.S.No.56 of 2018 against the petitioner herein for declaration and recovery of possession. According to the petitioner, the boundaries mentioned in between both the properties has to be identified and measured. If the Advocate Commissioner is appointed and if the property is measured and note down the physical features, then, automatically it will come to light whether the petitioner has encroached the property of the defendants or whether the plaintiff is entitled for recovery of possession as claimed by him. Therefore, the Commissioner's Report will help the Court to arrive a just conclusion. In such circumstances, this Court finds that the trial Court, without applying its mind that the purpose for which the application has been filed, simply dismissed the application stating that the properties are different. Therefore, the order passed by the trial Court is set aside the trial Court is directed to appoint an Advocate Commissioner to note down the physical features and also measure the property as mentioned in the petition in I.A.No.428 of 2018 on the file of the District Munsif, Muthukulathur and proceed the case further in accordance with law.



7. With the above directions, the Civil Revision Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (A.D.II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

akv

To

The District Munsif Court,
Mudukulathur.

+1cc to Mr.K. Kumaravel, Advocate in SR no.11439, dated 12.03.2020.

+1cc to Mr.D. Srinivasaragavan, Advocate in SR No.11566,
dated:13.03.2020.

C.R.P. (P.D.) (MD) .No.290 of 2020

12.03.2020

PU (19.05.2020) 3P 4C