



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 06.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

C.R.P (MD) No.368 of 2020
and C.M.P (MD) No.2168 of 2020

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Viagularaj ... Revision Petitioner/Petitioner/Plaintiff

Vs.

Peer Mohammad ... Respondent/Respondent/Defendant

PRAYER: The Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 05.09.2019 passed by the Subordinate Judge, Valliyoor in I.A.No.04 of 2019 in O.S.No.30 of 2014 on the file of the Subordinate Judge, Valliyoor.

For Petitioner : Mr.S.Niranjana S.Kumar
For Respondent : No appearance

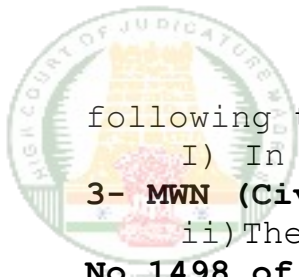
O R D E R

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 05.09.2019 passed by the Subordinate Judge, Valliyoor in I.A.No.04 of 2019 in O.S.No.30 of 2014 on the file of the Subordinate Judge, Valliyoor.

2. The petitioner is the plaintiff in O.S.No.30 of 2014 on the file of the Sub Judge, Valliyur. The respondent is the defendant. The petitioner filed a suit against the respondent for permanent injunction for the petition mentioned property. During the pendency of the suit, the petitioner has filed an application under Order 26 Rule 9 C.P.C to appoint an Advocate Commissioner to note down the physical features and also measurement about portion encroached by the respondent. It was dismissed by the trial court, against which, the plaintiff is before this Court.

3. The learned counsel for the petitioner would submit that even though he has filed the suit for permanent injunction, subsequently the respondent has filed his written statement stating that he has encroached some of the property and therefore in order to establish the physical features, the appointment of Advocate Commissioner is necessary. The trial court has failed to consider the nature of claim. Without considering the averments made in the affidavit filed by the petitioner, the petition seeking to appoint an Advocate Commissioner was dismissed by the rial court and the same warrants interference by this Court.

4. To support his claim, he has also placed reliance on the <https://hcservices.ecourts.gov.in/hcservices/>



following two judgments:

- I) In the case in **B.Amutha Vs.Anandhi Sankara Narayanan (2016 - 3- MWN (Civil) 614)**
- ii) The order of this Court **dated 10.02.2020** passed in **C.R.P (MD) No.1498 of 2019.**

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5. Heard the learned counsel for the petitioner and perused the materials available on record. There is no representation on behalf of the respondent.

6. On a careful perusal of the records, it is seen that the suit was filed for permanent injunction for the petition mentioned property. That be the case, the petitioner cannot file an application to appoint an Advocate Commissioner to establish his possession. Even though the respondent has filed in his written statement that he has encroached some property, the petitioner has not filed any claim for possession, mandatory injunction to remove the obstructions or encroachments.

7. Further, the judgments cited by the learned counsel for the petitioner are no way related to the present case. The facts and circumstances of the case are entirely different from the cases referred to by the learned counsel.

8. It is well settled preposition of law that Advocate Commissioner cannot be appointed either to establish possession or collect evidence. Under such circumstances, this Court does not find any perversity in the order of the trial court. There is no merit in the revision and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CrlSide)

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/ /2020

Sub Assistant Registrar(CS)

CM

To,

The Subordinate Judge, Valliyoor.

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