



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03/03/2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P (MD) No.402 of 2020

and

C.M.P (MD) No.2322 of 2020

A.Kamatchiyammal ... Petitioner/Petitioner/1st defendant

Vs.

1.Ganesan @ Palanichamy ... 1st Respondent/1st respondent/plaintiff

2.State rep. by
The District Collector,
Pudukkottai.

3.The District Revenue Officer,
Pudukkottai.

4.The Tahsildar,
Iluppur,
Pudukkottai District. ... Respondents 2 to 4/Respondents 2to 4/
Defendants 2, 3, 4

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 03.01.2019 passed in I.A.No.183 of 2018 in O.S.No.165 of 202 on the file of the learned Principal Sub-Court, Pudukkottai.

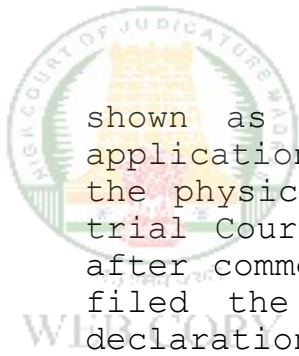
For Petitioner : Mr.G.Mathavan

For R-2 to R-4 : Mr.M.Jeyakumar,
Additional Government Pleader

ORDER

The first respondent filed a suit in O.S.No.165 of 2012 on the file of the learned Principal Sub-Court, Pudukkottai, for declaration and injunction and in alternate for recovery of possession.

2. The suit was filed in the year 2012. The petitioner was



shown as first defendant in the said suit. He has filed an application for appointment of Advocate Commissioner to note down the physical features and measurement, in the year of 2018. The trial Court dismissed the said application on the sole ground that after commencement of the trial, to drag on the proceedings, he has filed the said application and further that, in the suit for declaration and permanent injunction, to ascertain the possession, Advocate Commissioner cannot be appointed.

3. Aggrieved over the said dismissal order passed by the trial Court, the first defendant/petitioner filed this Civil Revision Petition before this Court.

4. The learned counsel for the petitioner would submit that already the first respondent/plaintiff filed a writ petition before this Court in W.P(MD)No.9731 of 2010 and in which, this Court has stated that the first respondent/plaintiff was not in possession of the property and subsequently, road was formed and in whose property the road is passing through is necessary to be measured.

5. The trial Court failed to consider the submissions made by the petitioner in the affidavit and simply dismissed the petition on the ground of delay and laches.

6. Heard both sides and perused the materials placed before this Court.

7. The first respondent/plaintiff filed the suit against the petitioner and other respondents in O.S.No.165 of 2012 on the file of the Principal Sub-Court, Pudukkottai. The suit was filed in the year 2012. The petitioner has also filed her written statement as early as on 17.11.2012 itself. The trial was commenced in the year 2018. P.W.1 was also examined. While the matter stood thus, the petitioner has filed the present interlocutory application in the year 2018, to appoint an Advocate Commissioner, after commencement of the trial. Further, the suit is for declaration and permanent injunction and in alternative recovery of possession. Therefore, Advocate Commissioner cannot be appointed either to collect evidence or to find out the possession and further the suit was pending from the year 2012. Since the petitioner has filed her written statement in the year 2012 and for five years, she has not chosen to file the petition to appoint an Advocate Commissioner, the trial Court has dismissed the petition on the ground that to ascertain the physical possession, Advocate Commissioner cannot be appointed and only to delay the proceedings, she has filed the present petition. Therefore, this Court also finds that there is no perversity or infirmity in the order passed by the trial Court and there is no merit in this revision and the same is liable to be dismissed.



In the result, this Civil Revision Petition is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (records)

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// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pm

To

1. The Principal Sub-Court,
Pudukkottai.
2. The District Collector,
Pudukottai
3. The Tahsildar,
Iluppur, Pudukkottai District

+1 CC to SPL.GP (SR-10193[F] dated 05/03/2020)

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MK (18.03.2020) 3P 5C