



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.01.2020

CORAM:

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (MD)No.1581 of 2019

and

C.M.P. (MD)No.8348 of 2019

WEB COPY

KR.Vellaikannu

.. Petitioner/Petitioner/
1st Defendant

Vs.

1) Velayudham

.. 1st Respondent/ 1st
Respondent/Plaintiff

2) Subramanian

.. 2nd Respondent/
2nd Respondent/2nd Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 15.07.2019 passed in I.A.No.312 of 2018 in O.S.No.149 of 2017 on the file of Additional District Munsif Court, Karaikudi.

For Petitioner : Mr.M.P.Senthil

For Respondents : No Appearance

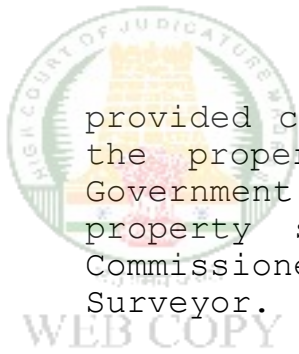
O R D E R

This Civil Revision Petition has been filed against the order dated 15.07.2019 passed in I.A.No.312 of 2018 in O.S.No.149 of 2017 on the file of Additional District Munsif Court, Karaikudi.

2. The petitioner is the first defendant. The first respondent is the plaintiff. The second respondent is the second defendant in the suit. The first respondent filed a suit praying for permanent injunction. The first defendant filed a petition in I.A.No.312 of 2018 for appointment of a Court Commissioner. That petition was dismissed by the trial Court. Against which, the first defendant preferred the revision petition.

3. The case of the petitioner is as follows:-

The suit property was classified as Punja lands and the first defendant is enjoying the property for the past forty years. The first defendant cultivated several trees, constructed a house, dug a well and constructed two thatched sheet houses and two asbestos sheet houses and the defendant is paying house tax, electricity charges and water taxes. The Government has laid cement roads,



provided common water tap, street light etc. The plaintiff claimed the property as if the property was assigned to him by the Government and he is trying to encroach upon the property and the property should be measured and to be photographed by the Commissioner with the help of Village Administrative Officer and Surveyor.

4. In the counter affidavit, it has been stated that only with a motive to drag on the proceedings, the petitioner has filed this civil revision petition.

5. After hearing both sides, the trial Court dismissed the petition against which the petitioner preferred this revision petition.

6. On the side of the petitioner, it is stated that the issue is relating to the existence of a house. Though electricity connection and water connection are given to the house, the property is denied in the evidence of P.W.1. In order to decide the issue, a local inspection by the Advocate Commissioner is proper. Merely on the ground that the suit is filed for permanent injunction, the trial Court dismissed the petition filed by the petitioner and therefore, the revision has to be allowed.

7. It is seen that the suit is filed for bare injunction. The petitioner herein is the first defendant and the burden is on the plaintiff to prove the case. In the petition itself, the petitioner has stated that he is in possession and paying house tax and water tax and to prove the above facts that he is in possession, a Commissioner has to be appointed. It is a well settled that a Commissioner cannot be appointed to collect evidence or to find out who is in possession. Moreover, when the burden is upon the plaintiff, there is no necessity for the defendant to pray for the appointment of a Commissioner.

8. In the above circumstances, there is nothing sufficient enough to interfere in the order passed by the lower Court. Therefore, this Civil Revision Petition is dismissed. No Costs. Consequently, connected C.M.P.(MD)No.8348 of 2019 is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



To:

The Additional District Munsif Court,
Karaikudi.

Copy to:

The Section Officer, V.R.Section, (2 Copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-1338[F] dated 10/01/2020)

Order made in
C.R.P. (MD) No.1581 of 2019
08.01.2020

JMN(02.03.2020) 3P : 5C