



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.08.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (MD)No.1807 of 2015

and

M.P. (MD)No.1 of 2015

WEB COPY

- 1.Sarasu
- 2.Ilavarasi
- 3.Angammal

: Petitioners/Respondents/Defendants

.. Vs ..

Pichaimuthu

: Respondent/Petitioner/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to call for the records relating to the impugned fair and decretal order dated 26.12.2013 made in I.A.No.174 of 2010 in O.S.No.84 of 2010 on the file of District Munsif Court, Kodaikanal, set aside the same and allow this Civil Revision Petition.

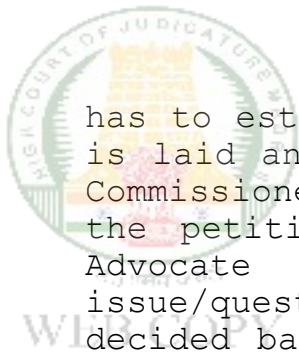
For Petitioners	: Mr.V.Janakiramulu
For Respondent	: No appearance

ORDER

This Civil Revision Petition is directed against the order passed by the learned District Munsif, Kodaikanal, in I.A.No.174 of 2010 in O.S.No.84 of 2010.

2.The respondent/plaintiff filed the suit in O.S.No.84 of 2010 for permanent injunction restraining the revision petitioners and their agents from interfering with his peaceful possession and enjoyment of the suit property and for consequential relief. The suit property has been described as a property measuring an extent of 20 cents in Survey No.1460 in Vilpatti Village, Attuvampatti Bharathi Nagar in Kodaikanal Taluk in Dindigul District. During the pendency of the suit, the respondent/plaintiff filed an application in I.A.No.174 of 2010 for appointment of an Advocate Commissioner to note down the physical features with reference to the four boundaries and measurements and to file a report along with a map. The said application was allowed by the lower Court accepting the case of the respondent/plaintiff. Aggrieved by the same, the defendants in the suit have preferred the above Civil Revision Petition.

3.The learned Counsel appearing for the petitioners submitted that in a suit for injunction where the parties are disputing the title of the other, the lower Court need not appoint an Advocate Commissioner to note down the physical features of the suit property. The learned Counsel further submitted that the plaintiff



has to establish his own possession over the property when the suit is laid and that the plaintiff cannot seek appointment of Advocate Commissioner to fish evidence. The learned Counsel appearing for the petitioners then submitted that the Court cannot appoint an Advocate Commissioner to note down one's possession as the issue/question as to the enjoyment of the property has to be always decided based on documents and materials produced before the Court and not by the Commissioner's report.

4.This Court is not able to find any substance in the submission of the learned Counsel appearing for the petitioners in this case. In a suit for injunction, it is true that the question of possession has to be established independently and not by appointment of an Advocate Commissioner. The revision petitioners in the counter affidavit filed before lower Court have stated that the suit property has not been properly described and the boundary description is wrongly given. Hence, the appointment of Advocate Commissioner is necessary. The lower Court has found that the Commissioner's report as per the warrant issued will be helpful to Court in resolving the dispute and understanding the dispute. This Court does not find any serious infirmity or irregularity in the order of the lower Court in allowing the petition for appointment of an Advocate Commissioner. As a result, this Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

SRM

To
The District Munsif Court,
Kodaikanal.

+1 CC to M/s.V. JANAKIRAMULU, Advocate (SR-15053[F] dated
27/08/2020)

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