



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.12.2020

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) No. 2743 of 2018 (PD)

and C.M.P. (MD) No. 12007 of 2018

1. Santhanapandi

...Petitioner/Petitioner/Plaintiff

Vs.

Santhanam

...Respondent/Respondent/Defendant

PRAYER : Petition filed under Article 227 of Constitution of India, against the Fair and decreetal order, dated 26.07.2018 passed in I.A. No. 485 of 2017 in O.S. No. 78 of 2017 by the learned District Munsif, Mudukulathur.

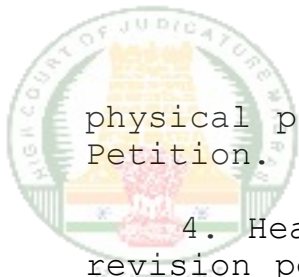
For Petitioners : Mr. K. Kumaravel

ORDER

This petition has been filed, against the Fair and decreetal order, dated 26.07.2018 passed in I.A. No. 485 of 2017 in O.S. No. 78 of 2017 by the learned District Munsif, Mudukulathur.

2. The revision petitioner herein/plaintiff has filed a suit in O.S. No. 78 of 2017 on the file of the District Munsif Court, Mudukulathur, for Mandatory injunction. During the pendency of the suit, the revision petitioner has filed a petition in I.A. NO.485 of 2017 in O.S. No. 78 of 2017 for appointing Advocate Commissioner and the same was dismissed by order, dated 26.07.2018 by the learned District Munsif, Mudukulathur. Hence, the revision petitioner is before this Court.

3. At the hearing, the learned counsel for the Revision Petitioner, Mr.K. Kumaravel, submitted that it is necessary to appoint the Advocate Commissioner for inspection of suit property and find out the physical possession of the suit property along with Surveyor to be requisite of proper, for the purpose of elucidating the matter in disputes between the parties, it can be ordered as per Order 26 Rule 9 of C.P.C. He further submitted that the suit was filed for declaration, mandatory injunction and recovery of possession and the case of the revision petitioner/plaintiff is that the respondent herein/defendant has encroached the plaintiff's land and constructed a house and the respondent/defendant's case is that he has constructed his house on his land only and therefore, it is very necessary to appoint the Advocate Commissioner to note the



physical possession. Hence, he prayed to allow the Civil Revision Petition.

4. Heard Mr. K. Kumaravel, learned counsel appearing for the revision petitioner and perused the material documents available on record.

5. The pleadings, impugned order and oral submission of the learned counsel appearing for the petitioner were considered carefully. The revision petitioner/plaintiff has filed a petition in I.A. No. 485 of 2017 in O.S. No. 78 of 2017 under Order 26 Rule 9 of C.P.C., for appointing Advocate Commissioner to note the physical possession of the suit property. The petition was dismissed, against the same the Revision has been filed. The suit in O.S. No. 78 of 2017 has been filed for declaration and recovery of possession. For declaration, the Court can decide only through oral and documentary evidence. The respondent/defendant has also admitted that he put a hut in the suit property. Whether the property is belonged to the plaintiff and the hut is to be removed are the issues. It can be decided based on oral and documentary evidence and hence, appointment of Advocate Commissioner is not necessary.

6. In view of the above, the learned District Munsif, Mudukulathur has rightly dismissed the Commission petition in I.A. No. 485 of 2017 in O.S. No. 78 of 2017 by order, dated 26.07.2018.

7. Finally, the Civil Revision Petition stands dismissed and the order, dated 26.07.2018 in I.A. No. 485 of 2017 in O.S. No. 78 of 2017 passed by the learned District Munsif, Mudukulathur, is hereby confirmed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ksa

NOTE:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1. The District Munsif, Mudukulathur.

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

+1 CC to Mr.T.THIRUMURUGAN, Advocate SR.No. 27166

Order made in
C.R.P. (MD) No. 2743 of 2018 (PD)
23.12.2020

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NA (CO)
TR(08.01.2021) 3P 5C