

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 09.02.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. (PD) No.171 of 2021
and
C.M.P.No.1581 of 2021

1.Mumtaj Begum
W/o.Raheem Khan

2.Soukath Ali,
S/o.Raheem Khan

...Petitioners/ Petitioners/
Plaintiff

Vs

Selvaraj
S/o.Kesavan Padayachi

...Respondent/ Respondent/
Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to allow the Civil Revision Petition and set aside the fair order and decreetal order dated 22.06.2020 passed in I.A.No.8 of 2020 in O.S.No.151 of 2017 by the Principal District Munsif Court at Chidambaram.

For Petitioner : Mr.R.Sagadevan

O R D E R

The present petition has been filed against the order dated 22.06.2020 made in I.A.No.8 of 020 on the file of the Principal District Munsif Court, Chidambaram in and by which the application filed by the petitioner for appointment of Advocate Commissioner for local inspection of the suit property was dismissed.

2. The matter and issue relates to the property dispute between the parties, more especially relating to "C" scheduled properties, as mentioned in the suit, which is the claim of the plaintiffs, which has been put up more than 20 years ago by one Shajahan. In order to ascertain the nature and age of the structure, a petition was filed for appointment of Advocate

Commissioner to inspect the property and give a report. The said defendant contended that the defendant disputed the claim of the plaintiff with regard to the said structure and submitted that though the original suit was filed as early as in the year 2017, the present petition for appointment of Advocate Commissioner has been made only in the year 2020, which shows that the plaintiff is trying to drag on the issue and accordingly prayed for dismissal of the application.

3. The Court below, on consideration of the materials available on record, dismissed the application for appointment of Advocate Commissioner. Aggrieved by the same, the present petition has been filed.

4. Heard the learned counsel for the petitioner and perused the materials available on record.

5. A perusal of the order passed by the trial Court reveals that the original suit was filed as early as in the year 2017. But, only after a period of three years i.e., in the year 2020, the present petition for appointment of Advocate Commissioner has been filed. It clearly shows that the plaintiff is fishing in troubled water to find out whether he may get some evidence through the Advocate Commissioner, which would be beneficial to his case.

6. Further, it is seen from the order of the Trial Court that the prayer sought for by the plaintiff is for permanent injunction in respect of "C" schedule property. However, the structure that is alleged to have been put up by the defendant relates to "B" schedule property and the plaintiff wants to find out whether the structure is 20 years of age or is on recent origin. The trial Court has rendered a categorical finding that the prayer of the plaintiff is only with regard to "C" schedule property and hence, there was no necessity for the appointment of Advocate Commissioner to inspect and find out the age of the structure put in the "B" schedule property. The right of the plaintiff with regard to "C" schedule property has to be proved by the plaintiff with the evidence available with them. Therefore, the present act of the plaintiff clearly reveals that the application has been filed not only for dragging on the proceedings, but also for trying to get some evidence, which would be beneficial to his case.

7. Therefore, in view of the above, this Court finds that the material facts have been appreciated by the trial Court in a proper perspective and the interim application has been rightly dismissed, which does not call for any interference.

8. Accordingly, this civil revision petition stands dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sbn

To

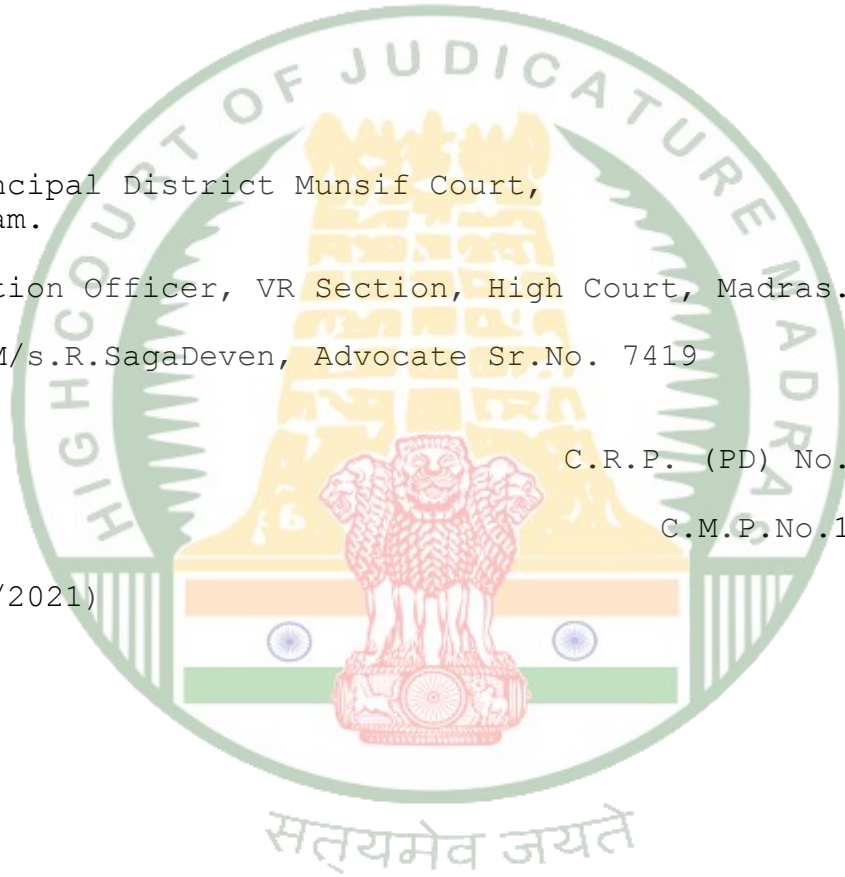
1.The Principal District Munsif Court,
Chidambaram.

2.The Section Officer, VR Section, High Court, Madras.

+1 cc to M/s.R.SagaDeven, Advocate Sr.No. 7419

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AAB (CO)
RMP (21/04/2021)



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