

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.PD.No.236 of 2019
and
C.M.P.No.1906 of 2019

1.M.Sureshkumar
2.A.Gowrisangar

... Petitioners / Respondents / Defendants

Vs

1.Jeyalakshmi
2.Balasubramaniam

... Respondents / Petitioners / Plaintiffs

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 20.12.2018 made in I.A.No.1657 of 2017 in O.S.No.1587 of 2017 on the file of the II Additional District Munsif Court, Coimbatore.

For Petitioners

..

Mr.R.Krishna Prasad

For Respondents

..

B.Kumarasamy

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ORDER

This Revision Petition has been filed by the defendants in O.S.No.1587 of 2017 now pending on the file of the learned II Additional District Munsif, Coimbatore. The said suit had been filed seeking permanent injunction restraining the defendants from interfering with peaceful possession.

2.Mr.R.Krishna Prasad, learned counsel for the revision petitioners, pointed out that the plaintiffs in the suit had an occasion to institute earlier suit in O.S.No.1169 of 2013 which now is still pending on the file of the Principal Subordinate Court, Coimbatore. That suit had been instituted seeking partition and separate possession and incidentally also to protect the possession. In that suit, an application has been filed to implead the revision petitioners herein also as party / defendants.

3.It is the claim of the plaintiffs in that suit, that the revision petitioners had purchased the property pendite lite and therefore, they are necessary parties to the suit. The said application is pending.

4. In the meanwhile, the plaintiffs again instituted O.S.No.1587 of 2017 which is also pending on the file of the learned II Additional District Munsif, Coimbatore and as stated seeking an order of permanent injunction again seeking to protect possession. The cause of action has been stated. I am not examining those aspects as on date.

5. In that particular suit namely, O.S.No.1587 of 2017, the plaintiffs filed two applications in I.A.Nos.1656 of 2017 and 1657 of 2017. In these two applications, the reliefs sought were for appointment of an Advocate Commissioner and for interim injunction. Both the applications came up for consideration and orders were passed on 20.12.2018. The learned II Additional District Munsif, Coimbatore had dismissed I.A.No.1656 of 2017 thereby negating the relief sought for injunction. However, the learned District Munsif appears to have favoured appointment of an Advocate Commissioner. I hope that the said order was not passed to balance dismissal of the order granting relief in the other application.

6. But however, the learned II Additional District Munsif had observed that there has been an allegation that the revision petitioners / defendants had demolished the property and therefore, it would be required to examine the physical features of the property. This order had been put to severe test by Mr.R.Krishna Prasad, learned counsel for the petitioner who pointed out that there is no ground for appointment of an Advocate Commissioner. On the other hand, the order has been supported by Mr.B.Kumarasamy, learned counsel who appeared for the respondents / plaintiffs.

7. I would rather hold that appointment of an Advocate Commissioner at this stage may not serve the ends of justice. The report of the Advocate Commissioner would not give any assistance to the Court, which is primarily examining the issues whether to grant permanent injunction or not.

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8. I would rather that the parties enter the witness box and the plaintiffs are given an opportunity to state their case. They must state the reason why they instituted the second suit. They may explain about the cause of action which arose during the pendency of O.S.No.1169 of

2013. They may also explain the nature of alterations if any made to the property.

9. Let that examination be put to test through cross-examination. At that stage, if the learned II Additional District Munsif, Coimbatore, feels that in the interest of justice and for clarity, he requires an officer of the Court to visit the place and to give actual physical features of the suit property, the learned II Additional District Munsif, Coimbatore, may on his own motion or on the application of either one of the parties, pass necessary orders for appointment of an Advocate Commissioner.

10. At this stage, the burden is very heavily on the plaintiffs to prove the facts stated in the plaint. That burden can never be shifted and the plaintiffs cannot seek assistance of any Advocate Commissioner to speak for and on their behalf. The Advocate Commissioner can be appointed only to assist the Court to come to a just conclusion and to determine the issues which arise in the suit.

11. I would therefore set aside the order under revision in I.A.No.1657 of 2017, but however keeping the option open to appoint an

Advocate Commissioner, if at all such necessity arises during the course of trial and on analysis of evidence.

12.If any application is filed seeking appointment of an Advocate Commissioner, I am confident that the learned II Additional District Munsif, Coimbatore would give an opportunity to the contesting parties to file counter and also hear them before taking a decision whether an Advocate Commissioner should be appointed.

13.With the said observations, the Revision Petition is disposed of. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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01.07.2021

Internet: Yes/No

Index: Yes/No

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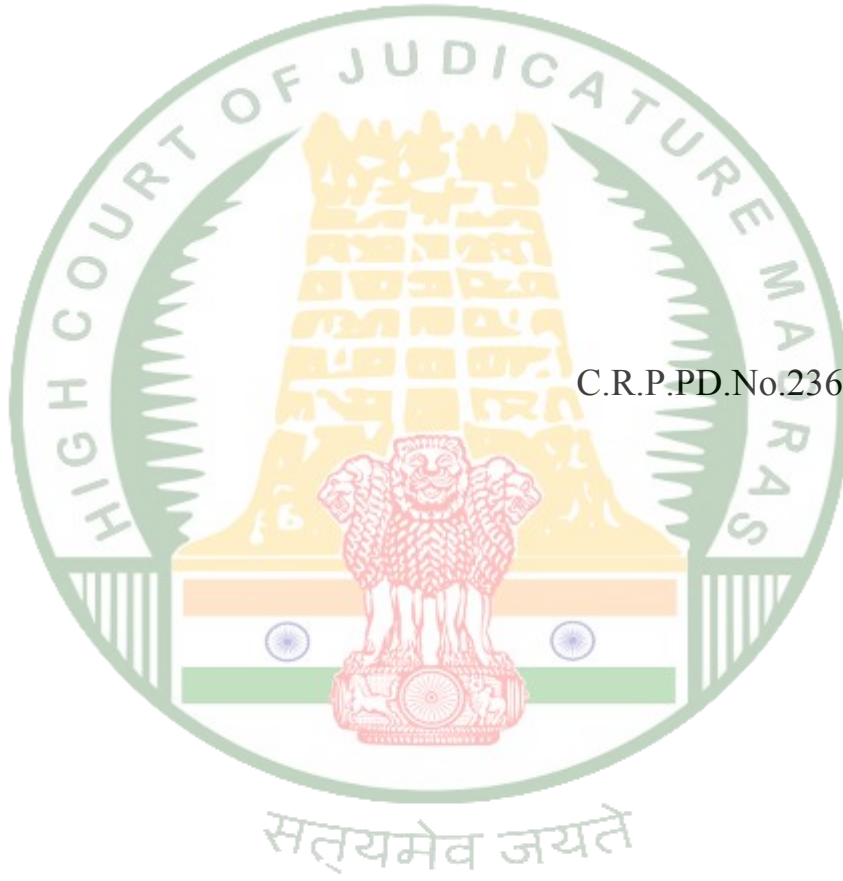
To,

The II Additional District Munsif, Coimbatore.

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C.V.KARTHIKEYAN,J.

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