

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (PD) No. 1129 of 2021

S.Kumar

... Petitioner

-VS-

1. G.Easwari

2. G.Kesavan

... Respondents

PRAYER : Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 26.09.2019 in I.A. No. 231 of 2018 in O.S. No. 71 of 2018 passed by the District Munsiff-cum-Judicial Magistrate, Sriperumbudur.

For Petitioner : Mr.Shaikh Mehrunnisa Kasim
For Respondents : Mr.T.Sundaravadanam

ORDER

The plaintiff in O.S. No. 71 of 2018 is the revision petitioner herein. The said Suit is pending on the file of the District Munsif-cum-Judicial Magistrate, Sriperumbudur. The said Suit had been filed by the plaintiff seeking a decree in the nature of permanent injunction restraining the defendants or any body else from interfering with the peaceful possession of the suit schedule property.

2. In the cause of action, it has been stated that the defendants were attempting to trespass into the suit property and are disturbing the plaintiff's peaceful possession and enjoyment. The plaintiff has also given a complaint before the Sriperumbudur Police Officials.

3. The nature of the property is a land measuring an extent of 2668 sq.ft., in Old Survey No. 273 (part), New Survey No.313/23 in Venkadu Village, Sriperumbudur Taluk, Kancheepuram District.

4. A written statement has been filed on behalf of the second defendant.

5. The plaintiff then came to file I.A. No. 231 of 2018 under Rule 26 Rule 9 of Code of Civil Procedure seeking appointment of an Advocate Commissioner to visit the petitioner premises and to note down the physical features of the suit property with the help of a Taluk Surveyor and also to take photographs.

6. The scope of the Suit is whether the defendants attempted to encroach into the suit property and disturbed the peaceful possession of the plaintiff. For that purpose, I am not able to find how photographs or even a report of the Advocate Commissioner or a report of a Town Surveyor would be helpful to assist the Court.

7. During evidence, the plaintiff should establish lawful possession and also should establish that the defendants on the particular date as mentioned in the cause of action paragraph attempted to enter into the suit property and tried to disposes the plaintiff.

8. These are all facts to the exclusive knowledge of the plaintiff. The plaintiff cannot seek the assistance of an Advocate Commissioner to speak about possession. No Court can permit appointment of Advocate Commissioner to determine possession of a particular property. Even if any report of the Advocate Commissioner mentions about possession, no Court can take judicial note of the same.

9. The learned District Munsif-cum-Judicial Magistrate, Sriperumbudur was not impressed with the said application in I.A. No. 231 of 2018 and dismissed the same by order dated 26.09.2019. Questioning that particular order, this Revision Petition has been filed.

10. The learned District Munsif-cum-Judicial Magistrate, Sriperumbudur, has clearly stated that an Advocate Commissioner cannot be appointed to gather evidence. He has also stated that the factum of possession has to be adjudicated only through oral and documentary evidence placed before the Court by the parties.

11. These are cogent and acceptable reasons.

12. This Civil Revision Petition is dismissed. However, there shall be no order as to costs.

22.07.2021

Index: Yes/No

Speaking Order: Yes/No

vji

To

The learned District Munsiff-cum-Judicial Magistrate,
Sriperumbudur.



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C.V.KARTHIKEYAN,J.

vji



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