

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (PD) Nos.1632 of 2020 and 1094 of 2021
and C.M.P. Nos.9994 of 2020 and 8531 of 2021

M.Thangarasu ... Petitioner /
Plaintiff
[in C.R.P. (PD) No.1632 of 2020]

M.Thangarasu ... Petitioner /
Defendant
[in C.R.P. (PD) No.1094 of 2021]

1.M.Punithavathi
2.M.Vijayakumar
3.M.Venkatachalapathy
4.S.Komarasamy
5.K.Nagarathinam ...
Respondents /
Defendants
[in C.R.P. (PD) No.1632 of 2020]

1.S.Komarasamy
2.K.Nagarathinam ...
Respondents /
Plaintiffs
[in C.R.P. (PD) No.1094 of 2021]

PRAYER in C.R.P. (PD) No.1632 of 2020: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 11.06.2020 made in I.A.No.2 of 2020 in O.S.No.8 of 2020 on the file of the Principal District Munsif Court, Bhavani.

PRAYER in C.R.P. (PD) No.1094 of 2021: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 22.03.2021 made in I.A.No.3 of 2021 in O.S.No.27 of 2020 on the file of the Principal District Munsif Court, Bhavani.

For Petitioner : M/s.D.Sathya
[in both CRPs]
For Respondent Nos.4 & 5 : Mr.S.Lakshmipathy
[in C.R.P. (PD) No.1632 of 2020]
For Respondent Nos.1 & 2 : Mr.S.Lakshmipathy
[in C.R.P. (PD) No.1094 of 2021]

COMMON ORDER

C.R.P.No.1632 of 2020 is filed against the order dated 11.06.2020 passed in I.A.No.2 of 2020 in O.S.No.8 of 2020 and C.R.P.No.1094 of 2021 is filed against the order dated 22.03.2021 passed in I.A.No.3 of 2021 in O.S.No.27 of 2020.

2. The petitioner in both these Civil Revision Petitions, namely, M.Thangarasu, filed the suit in O.S.No.8 of 2020 against the defendants therein for the relief of permanent injunction, restraining them, from evicting or dispossessing him, from his peaceful possession and enjoyment of the suit property as a lessee and cultivating tenant, unless by due process of law.

3. The case of the petitioner is that, the suit property originally belonged to Manickaraj, who is the father of the defendants 1 to 3. The petitioner has purchased an extent of 3.20 acres of land in Re.S.Nos.615/5 and R.S.No.615/6 at Jambai Village from Manickaraj in the year 2001. Manickaraj leased out the suit property orally in tamil month of Thai in 2005 for the yearly lease amount of Rs.30,000/-. Thereafter, the petitioner has been in peaceful possession and enjoyment of the suit property, as a cultivating tenant. The petitioner has spent a sum of Rs.10,00,000/- for improving the lands. He dug out a borewell by spending Rs.1,00,000/- and established drip irrigation by spending Rs.1,50,000/-. He also constructed a Tata Roof Sheeted Hollow brick house for his dwelling.

4. Manickaraj borrowed several sums from the petitioner earlier and on 02.01.2018, he borrowed Rs.7,00,000/- from the petitioner. He also executed the Lease Deed. Manickaraj died on 01.12.2018. Defendants 1 to 3 gave oral consent to the petitioner to hold over the suit property as lessee continuously. Defendants 4 and 5 came to the suit property on 11.12.2019 and claimed that, they purchased the suit property on 09.12.2019 and threatened the petitioner to vacate the suit property. Therefore, the suit in O.S.No.8 of 2020 was filed.

5. O.S.No.27 of 2020 was filed by the purchasers of the suit property from the defendants 1 to 3 in O.S.No.8 of 2020 claiming that, they are in possession and enjoyment of the suit property from the date of purchase and seeking the relief of permanent injunction against the petitioner. In both the suits, written statements have been filed and the matters are pending before the trial Court.

6. The petitioner filed I.A.No.2 of 2020 in O.S.No.8 of 2020 under Order 26 Rule 9 and Section 151 of C.P.C. seeking the

appointment of an Advocate Commissioner. Another petition in I.A.No.3 of 2021 in O.S.No.27 of 2020 was filed for the same relief. Both the petitions were opposed by the respondents. The learned trial Judge, considering the submissions and materials placed before him, dismissed both the petitions. Against the dismissal of both the petitions, the present Civil Revision Petitions are preferred.

7. The learned counsel for the petitioner submitted that the petitioner is a cultivating tenant in respect of the suit property. He has been cultivating lands from the year 2005. He spent Rs.10,00,000/- for improving the lands, to dug the borewell, established drip irrigation and constructed a small hollow brick house in the suit property. All of sudden, the defendants 4 and 5 in O.S.No.8 of 2020 claiming themselves as purchasers from the former owners trying to interfere with the peaceful possession and enjoyment of the petitioner, as a cultivating tenant. The appointment of the Advocate Commissioner, is necessary for knowing the physical features of the property. Only then the petitioner is in a position to prove that, he is in possession and enjoyment of the suit property, as a cultivating tenant and

that he made all the aforesaid improvements and developments in the suit property. It is also submitted that the description of property given in O.S.No.27 of 2020, is different. If the Advocate Commissioner is appointed, it will help the Court to resolve the issue between the parties, without much of oral and documentary evidence. However, without considering these aspects, the learned trial Judge has dismissed the petitions.

8. In reply, the learned counsel for the respondents submitted that the petitioner filed the suit for permanent injunction, claiming himself to be a cultivating tenant primarily on the basis of the possession in the suit property. The Advocate Commissioner's Petition is filed without assigning any reason and to show that the petitioner is in possession and enjoyment of the suit property. The Advocate Commissioner cannot be appointed for noting the physical features of the suit property or to collect evidence. The petition in I.A.No.2 of 2020 in O.S.No.8 of 2020 was filed for the appointment of the Advocate Commissioner. After this petition was dismissed, he filed I.A.No.3 of 2021 in O.S.No.27 of 2020 without mentioning about the dismissal of the Commission Petition filed in

I.A.No.2 of 2020. The pendency of C.R.P.No.1632 of 2020 was not mentioned in the subsequent Commission Petition filed in I.A.No.3 of 2021. It is a clear suppression of material facts. The learned trial Judge has considered the submissions of both the parties and rightly decided to dismiss the petition. Therefore, the learned counsel for the respondents prayed for confirming the order of the learned trial Judge and for dismissing these Civil Revision Petitions.

9. The narration of facts above shows that the petitioner filed O.S.No.8 of 2020 claiming himself as a cultivating tenant in respect of the suit property. The defendants in O.S.No.8 of 2020, especially the defendants 4 and 5 claimed that they purchased the suit property from the defendants 1 and 2 on 09.12.2019 and from the date of purchase, they claimed themselves to be in possession and enjoyment of the suit property. In a case filed for seeking the permanent injunction on the basis of the possession, the plaintiff has to prove the possession on the basis of oral and documentary evidence. The plaintiff cannot seek the appointment of the Advocate Commissioner to prove the possession. Though it is claimed by

the petitioner that he made improvements by spending Rs.10,00,000/- to dug the borewell, established drip irrigation and constructed a hollow brick house, it appears that there is no evidence produced in this regard. If really, these developments and construction had been made by the petitioner, he must be having some records to support his claim. This claim has to be proved only by producing oral and documentary evidence and not by seeking the appointment of the Advocate Commissioner to note down the physical features.

10. With regard to the description of property, there is no four boundaries given in the schedule of property in O.S.No.8 of 2020. In O.S.No.27 of 2020, description of properties given with four boundaries. Therefore, there appears some difference. However, it is a matter for evidence. It is settled proposition of law that in a suit based on possession, the parties have to prove their possession only on the basis of oral and documentary evidence. The learned trial Judge, has considered these aspects and rightly dismissed these petitions. Therefore, this Court finds no reason to interfere with the orders passed by the learned Principal District Munsif,

Bhavani and confirms the orders passed in I.A.No.2 of 2020 in O.S.No.8 of 2020 dated 11.06.2020 and I.A.No.3 of 2021 in O.S.No.27 of 2020 dated 22.03.2021.

11. Resultantly, these Civil Revision Petitions are dismissed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

25.08.2021

Speaking order / Non-speaking order
Index : Yes / No

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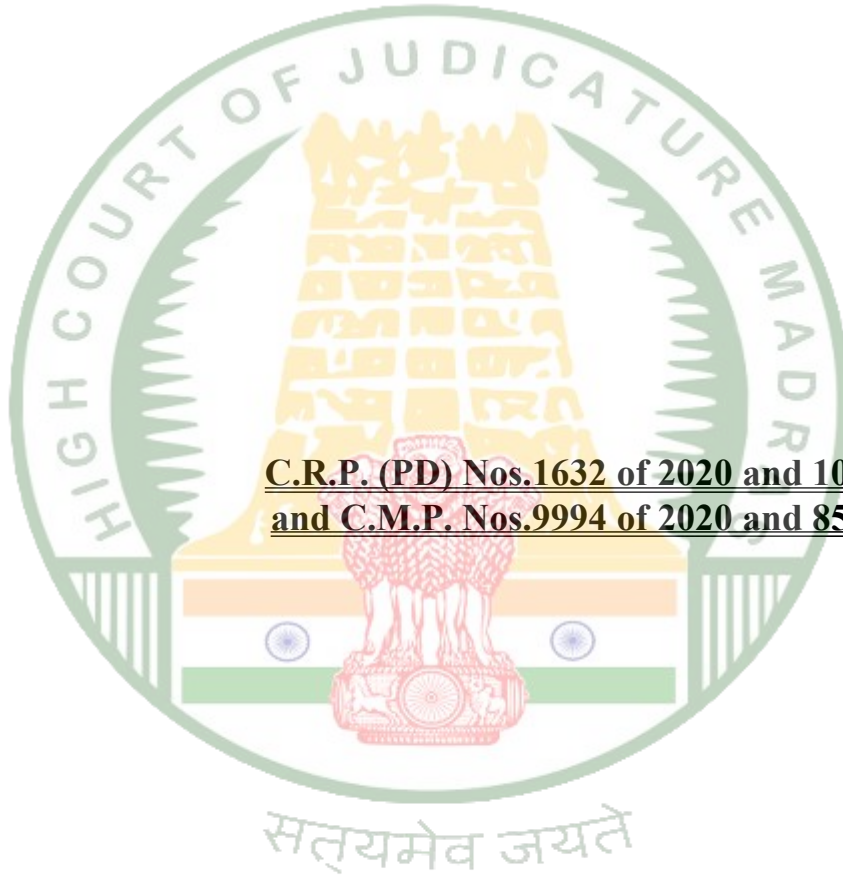
To

The Principal District Munsif, Bhavani.

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G.CHANDRASEKHARAN, J.

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