



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P.NO.1507 OF 2021

AND

C.M.P.NO.11904 OF 2021

(Through Video Conference)

Akbar Basha

... Petitioner/Petitioner/
Plaintiff

Versus

1. Mubarak

2. Asha

3. The District Collector,
District Collectorate,
Villupuram District.

4. The Tahsildar (Revenue),
Sankarapuram & Taluk,
Villupuram District.

... Respondents/Respondents/
Defendants

PRAYER:-

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order passed by the District Munsif, Sankarapuram in I.A.No.279 of 2020 in O.S.No.189 of 2018 dated 08.04.2021.

For Petitioner : Mr.J.Pradeep

O R D E R

This Civil Revision Petition is filed to set aside the order of the learned District Munsif, Sankarapuram passed in I.A.No.279 of 2020 in O.S.No.189 of 2018 on 08.04.2021.

2. I.A.No.279 of 2020 was filed under Order XXVI Rule 9 of the Civil Procedure Code for the Appointment of an Advocate



Commissioner. The learned counsel for the petitioner submitted that 'item 1' of the suit property is owned by Government and it is a 'பாடலை' land. There is no road or public passage in item no.1. There is a thar road in S.No.54/10 and there is also a place earmarked for road in Survey No.54/14. The respondents 1 and 2 encroached Survey No.54/14 along with their lands and are doing agriculture. On ground, there is no road in S.Nos.54/9 and 54/14. The respondents 1 and 2 have closed the way in S.No.54/6 on the northern side of the property which is the approach path to the land. These factors have to be proved as 'பாடலை' by the Advocate Commissioner, with a direction to inspect the aforesaid properties to note down the physical features and to file a report in this regard.

3. This I.A. was resisted before the Court below by the respondents 1 and 2 on the claim made by the petitioner that, there is 'no road' in Item No.1 of the suit property, is not correct. It is further said that this petition was filed only with a view to gather evidence in support of the case. The respondents 1 and 2, therefore, sought for the dismissal of the petition. On considering the rival submissions, the learned District Munsif, Sankarapuram dismissed the petition on the grounds that the petitioner has to prove his case from the oral and documentary evidence and he cannot seek for the appointment of an Advocate Commissioner to gather evidence in support of the case. Therefore, the I.A. was dismissed. Against the said order of dismissal, this Civil Revision has been filed.

4. Learned counsel for the petitioner submitted that appointment of an Advocate Commissioner is absolutely necessary in the facts and circumstances of the present case, for assisting the Court in resolving the issue. If an Advocate Commissioner is appointed, much of the oral and documentary evidence can be avoided. Therefore, he prays to set aside the order of the learned District Munsif, Sankarapuram in I.A.No.279 of 2020.

5. Considered the rival submissions. Perusal of the documents, especially the copy of the plaint in O.S.No.189 of 2018 filed in support of the case of the petitioner shows that the petitioner filed a suit seeking for injunction against the respondents 1 and 2 that they should not interfere with the possession and enjoyment of the suit property by way of permanent injunction and the next prayer was against the respondents 3 & 4, who is Government of Tamil Nadu, represented by the District Collector, Villupuram and Tahsildar, Sankarapuram, that they should not evict the petitioner unless by due process of law.



6. The suit property measures an extent of 0.14.0 ares situated at Sankarapuram Circle, Periyakolliyur Madura and Chinnakolliyur Village. It seems that the petitioner has filed along with the plaint, six documents in support of his claim of possession in the suit property. Even as per the case of the petitioner, the first item of the suit property is 'பாட்டை பறம்போக்கு' which was a place earmarked for 'road'. Obviously, a person cannot seek injunction against anyone, especially against the Government, claiming that he is in possession and in enjoyment of the road portion. Even if his case is true that he is in possession and enjoyment of the property in respect of Item No.2, he has to prove his case only by production of oral and documentary evidences. As rightly pointed out by the learned District Munsif, Sankarapuram, it appears on the face of it that this petition is filed only to gather evidence and that cannot be entertained.

7. Learned District Munsif, Sankarapuram has rightly considered the issue involved in this petition and has dismissed the same. This Court finds no reasons to interfere with the findings of the learned District Munsif, Sankarapuram and in this view of the matter, this Civil Revision Petition is Dismissed. No costs. Consequently, connected C.M.P.No.11904 of 2021 is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The District Munsif,
Sankarapuram.
2. The District Collector,
District Collectorate,
Villupuram District.
3. The Tahsildar (Revenue),
Sankarapuram & Taluk,
Villupuram District.

C.R.P.NO.1507 OF 2021

NR(CO)
PBS/27/08/2021