

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2021

CORAM:

THE HONOURABLE Mr.JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD)No.1909 of 2021
and C.M.P.No.14825 of 2021
(Through Video Conference)

Periyasamy

...Petitioner

Versus

A.Sivakumar

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final Order in I.A.No. 1493 of 2018 in O.S.No. 347 of 2015 on the file of the Principal District Munsif, Attur, dated 08.04.2021.

For Petitioner : Mr.J.Prithivi

ORDER

This Civil Revision Petition is filed to set aside the fair and final order passed in I.A.No.1493 of 2018 in O.S.No.347 of 2015 on the file of Principal District Munsif, Attur on 08.04.2021.

2. I.A.No.1493 of 2018 was filed under Order XXVI Rule 9 and 10 of the Civil Procedure Code for appointment of an Advocate Commissioner with a direction to inspect the suit property and note down the ridges, channel, coconut and arecanut trees with age and health and bore-well, channels and boundaries in the suit property.

3. It is seen from the affidavit filed in support of this petition that the petitioner, who is the defendant in the suit, claims that he is in possession and enjoyment of an extent of acre 1.04 -1/2 cents with specific boundaries and is residing in the suit property on the basis of valid transactions held between himself and his predecessors in interest. He is in possession and enjoyment of the suit property with 12 years old arecanut and coconut thope and the same are irrigated from the bore-well water of his other lands situated on the North and East of his lands. His land measuring an extent of acre 1.04 - 1/2 cents with coconut thope is irrigated from the bore-well and the arecanut thope is irrigated with separate and dedicated channel from his bore-well. Therefore, it is necessary for the appointment of an Advocate Commissioner for the reasons stated above.

4. This petition was contested by the respondent alleging that it is false to claim that the petitioner is in possession and enjoyment of the acre 1.04-1/2 cents in specific boundaries. The petitioner has not produced any revenue records to prove his claim of the alleged possession. Whereas, the respondent is in possession of the entire suit property and he was also granted patta in his favour on 19.05.1992 to the property in his possession by the Tahsildar, Attur. The petitioner is trying to encroach the suit property with a view to annex some portions of the suit property with his lands. The reason for appointing an Advocate Commissioner is not maintainable for the reason that evidence cannot be gathered by the appointment of an Advocate Commissioner. The learned Principal District Munsif, Attur has considered the rival submissions and dismissed the petition. Against the said dismissal order, the present Civil Revision Petition has been filed.

5. Learned counsel for the petitioner reiterated the averments made in the affidavit filed in support of the petition for the appointment of an Advocate Commissioner and submitted that there is an issue with regard to boundaries of the properties of both the parties. In fact, the petitioner and his brother

purchased 3.02 cents in S.Nos.3/1 & 3/2 from one Perumal and he had also got in possession of the lands with an extent of acre 1.04 -1/2 cent under the deed dated 29.11.2001 in the name of Kirya Thasthavej. The petitioner's family also deposited Rs.20,000/- with the Trust at PACB Bank, Valapadi on 03.12.2001 with bonafide faith to make the plaintiff to execute necessary and proper deed in respect of the defendant's family land in the suit property under a deed dated 29.11.2001.

6. As stated earlier, the petitioner claims to be in possession and enjoyment of the property and irrigating the coconut trees and arecanut trees through exclusive channels from his exclusive bore-well for noting down the physical features of the suit property and to bring forth the true features and realities, the appointment of an Advocate Commissioner is absolutely necessary. However, without considering the merits of the petitioner's claim, the petition was dismissed. Therefore, the learned counsel prays for setting aside the order of the learned Principal District Munsif, Attur and for allowing the application for the appointment of an Advocate Commissioner.

7. Considered the submissions made by the learned counsel for the petitioner and perused the records.

8. The petitioner herein is the defendant in this case. The respondent filed a suit seeking relief of permanent injunction against the petitioner restraining the petitioner, his men, agents, servants and power of attorneys from in any way manner trespassing or encroaching the suit property. The case of the respondent, as seen from the plaint averments is that, he is in possession and enjoyment of the suit property for the past 25 years without any interruption. The Tahsildar, Attur issued patta in respect of the suit properties as per the proceedings No.A.M.265/1401/(B1) dated 19.05.1992 in favour of the respondent. While he was enjoying peacefully, the petitioner is trying to interfere with the respondent's possession and enjoyment from 20.11.2015.

9. Admittedly, the suit was filed for permanent injunction by the respondent. It is for the respondent to prove that he is in possession and enjoyment of the suit property. If the petitioner claims that, the claim of the respondent that he is in possession and enjoyment of the suit property, is not correct and on the other hand, the petitioner is in possession and enjoyment of the suit property, then, he is expected to prove his case by oral and documentary evidence. Even as per the averments made in the written

statement, the defendant claims to have purchased only an extent of 3.02 cents in S.Nos.3/1 and 3/2 along with his brother P.Allimuthu. There is yet another reference about the partition deed called Kirya Thasthavej. It is also not known whether this deed is registered. Also, there is yet another averment in the written statement that the respondent has paid Rs.20,000/- with the Trust at PACB Bank, Valapadi on 03.12.2001 with a promise that the plaintiff would execute the deed. There is no supporting material produced in this regard.

10. The averments made in the affidavit filed in support of the appointment of an Advocate Commissioner clearly shows that this application is primarily filed only to collect evidence to show that the petitioner is in possession and enjoyment of the suit property. It is a well settled proposition of law that an Advocate Commissioner cannot be appointed for collection of evidence, especially in a suit for permanent injunction for proving possession. The petition for appointment of an Advocate Commissioner in the facts of the case is not necessary and was rightly dismissed by the learned Principal District Munsif, Attur. This Court has no reasons to interfere with the order passed by

the learned Principal District Munsif, Attur and therefore, the order stands confirmed.

11. Accordingly, this **Civil Revision Petition stands Dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

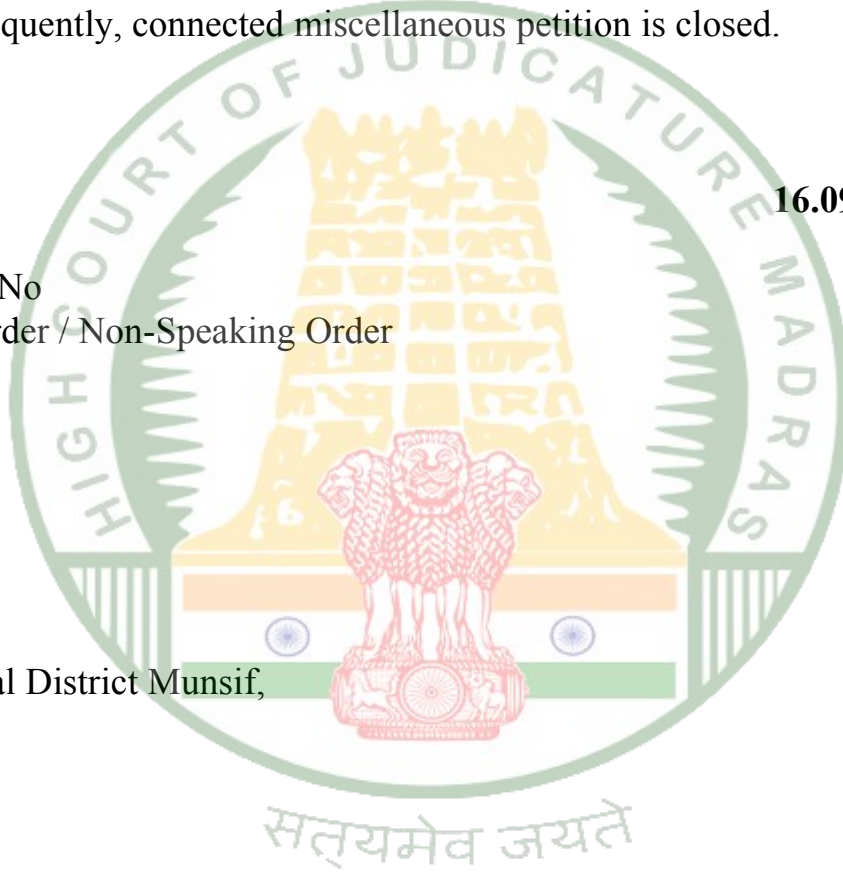
16.09.2021

Index: Yes/ No
Speaking Order / Non-Speaking Order

sts/jai

To:

The Principal District Munsif,
Attur.



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G.CHANDRASEKHARAN, J.,

sts/jai



Order made in
C.R.P.(PD)No.1909 of 2021

Dated:
16.09.2021

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