



C.R.P.(PD).No.2904 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.2904 of 2021

and

C.M.P.No.20895 of 2021

J.Rangasamy

.. Petitioner

Vs.

M.Kumar

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated 22.12.2020 passed in I.A.No.3 of 2020 in O.S.No.5 of 2020 on the file of the learned District Munsif cum Judicial Magistrate, Kotagiri.

For Petitioner : Mr.V.Chinnasamy



C.R.P.(PD).No.2904 of 2021

ORDER

WEB COPY Challenge in this Revision is to the order dismissing an application seeking appointment of Commissioner filed by the defendant in O.S.No.5 of 2020, a suit for permanent injunction.

2. The plaintiff sought for an injunctive relief contending that his father Muthan purchased 4 cents in S.No.57/11 at Kengarai Village from the defendant and his father on 19.03.1997. It is the further contention of the plaintiff that his father Muthan gifted the said land to him under a registered settlement deed dated 24.01.2019. Claiming that he is in possession of the property right through, the plaintiff sought for injunction.

3. The defendant resists the suit contending that there is a mistake in the sale deed of the year 1997 and all that was conveyed was only $\frac{3}{4}$ cents of land with building and not 4 cents as found in the pleadings. Pending suit the defendant filed an application for appointment of Commissioner to measure the properties situate in and around the suit property to show that the plaintiff is not in possession of the property. The said application was resisted on the



C.R.P.(PD).No.2904 of 2021

ground that the defendant is seeking to gather evidence by seeking appointment of Commissioner. The trial Court accepted the defence and dismissed the application.

4. Mr.V.Chinnasamy, learned counsel appearing for the petitioner would contend that it is not an attempt to gather evidence. But, the defendant by seeking appointment of Commissioner only wants to place on record the physical features of the property, so that he would be in a position to demonstrate his case in a better manner.

5. I am unable to countenance the submission of the counsel for the petitioner. As already adverted to, the suit is one for permanent injunction simpliciter. It is for the plaintiff to prove possession of the suit property. If the plaintiff fails to prove possession, he will fail in the suit. The plea of the defendant is one of mistake and it is for the defendant to prove that it is a mistake. The application for appointment of Commissioner in such circumstances is wholly unwarranted.



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C.R.P.(PD).No.2904 of 2021

R.SUBRAMANIAN, J.

dsa

6. The trial Court justified in dismissing the application. I do not see any material irregularity or illegality in the order of the trial Court to enable interference. The Revision therefore fails and it accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

21.12.2021

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Index : No

Speaking order

To

The District Munsif cum Judicial Magistrate, Kotagiri.

C.R.P.(PD).No.2904 of 2021

4/4