



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRP(PD) No.614 of 2017
and
C.M.P.No.3149 of 2017

T.Thirugnanasambandam
S/o.Thiruvengadam Mudaliar

Petitioner/
Respondent/Plaintiff

Vs.

D.Karthikeyan
S/o.Dhilli Mudaliar S.M.

Respondent/
Petitioner/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order dated 22.11.2016 in I.A.No.997 of 2014 in O.S.No.152 of 2013 on the file of the District Munsif at Thiruvallur.

For Petitioner : Mr.J.Ravikumar

For Respondent : M/s.S.B.Legal (NA)

O R D E R

(This case has been heard through video conference)

This revision petition has been filed seeking to set aside the order dated 22.11.2016 made in I.A.No.997 of 2014 in O.S.No.152 of 2013 passed by the learned District Munsif, Thiruvallur, appointing an Advocate Commissioner.

2. Mr.J.Ravikumar, the learned Counsel for the petitioner is present.

3. When the matter was listed on 21.04.2021, the learned Counsel for the petitioner was present and there was no representation for the respondent. Thereby, this Court had directed the matter to be listed today. Even today, when the revision petition is taken up for hearing, there is no representation for the respondent.



WEB COURT

4. The brief fact of the case is that the revision petitioner is the plaintiff in O.S.No.152 of 2013. The case of the petitioner/plaintiff is that he is the sole and absolute owner of the landed property in Thiruvallur District in No.130, Narasingapuram Village, Natham S.No.90/9, UDR S.No.162/12, Kammalar Street, admeasuring 4841 Sq.mtr. having obtained the same through family partition deed dated 12.09.1995 registered as Doc.No.1951 of 1995, at SRO, Perambakkam. It is the further case of the petitioner/plaintiff that the landed property was owned and enjoyed by his ancestors and then his father Thiruvengadam and thereafter, allotted to the petitioner herein during family partition. The petitioner/plaintiff had officially communicated about the acquisition of the property received by him during partition and the same was also entered in his Service Register as per the Service Rules for Village Administrative Officer. The petitioner had raised loan by mortgaging the property for his family needs and the petitioner had also obtained proof of possession from the village authority. While so, the respondent/defendant who was having property adjacent to the landed property of the petitioner, attempted to trespass the petitioner's land and usurp the property. Therefore, the petitioner/plaintiff lodged a police complaint and immediately filed a suit for permanent injunction to restrain the respondent/defendant from interfering with the peaceful possession of the petitioner/plaintiff in the suit property.

5. In the suit, the respondent/defendant had filed his written statement making various allegations stating that the petitioner's property was in the possession of the respondent's ancestors for time immemorial. However, the respondent/defendant had not produced any evidence to show his possession or enjoyment of the suit property. At that stage, the respondent/defendant had filed I.A.No.997 of 2014 seeking appointment of Advocate Commissioner along with a Surveyor to note down the physical features of the property and the trial Court by order dated 22.11.2016, had allowed the petition and appointed an Advocate Commissioner. Against which, the present revision petition has been filed.

6. The learned counsel for the petitioner/plaintiff would submit that the petitioner is the owner of the suit schedule property having got it through family partition. The petitioner/plaintiff had been in continuous possession of the property and it has also been recorded in his Service Register. Since the respondent/defendant had attempted to interfere with his peaceful possession in the property, the petitioner/plaintiff had filed the suit in O.S.No.152 of 2013



and he had also filed partition deed and other documents to show that he was in possession in the suit property, whereas the respondent/defendant had not even filed any iota of evidence to show that he was in possession or enjoyment of the property. Thereafter, the respondent/defendant had filed I.A.No.997 of 2014 seeking for appointment of Advocate Commissioner and even in the affidavit, he had averred that the appointment of Advocate Commissioner was for reducing much of evidence in this case and to help the Court to decide the dispute. The learned Counsel would further submit that it is a settled law that appointment of Advocate Commissioner cannot be done for the purpose of collecting evidence to find out the fact of possession. He would submit that the respondent/defendant had without any evidence to show that he was in possession of the suit property, sought for appointment of Advocate Commissioner and the trial Court had erroneously passed an order of appointing Advocate Commissioner. He would submit that the Court has to look into the prima facie title and factum and possession of the parties to the suit based on documentary evidence and should reject if any attempt is made by the parties to collect any evidence through Court. In support of his contention, the learned counsel would rely on the Judgements of this Court reported in 2008 (3) CTC 597 and 2009 (5) CTC 706. The learned Counsel would further submit that without contesting the case, the respondent/defendant had stated that 11 other persons are there in the property and that the suit is not concerned with that issue. Hence, he would seek to set aside the order.

7. This Court notes down the fact that even on the last occasion, the learned counsel for the respondent/defendant was not present and today also he is not present.

8. Heard the learned Counsel appearing for the petitioner and perused the materials on record.

9. In this case, I.A.No.997 of 2014 for appointment of Advocate Commissioner has been filed by the respondent/defendant and the respondent/defendant in his written statement had not filed any document to show that he was in possession of the suit property. Further, in the application for appointment of Advocate Commissioner, a specific averment has been made that it is for the purpose of collecting of evidence for the purpose of suit. It is a settled law that Advocate Commissioner cannot be appointed for collection of evidence in favour any of the parties. The trial Court without properly analysing the legal aspects, has passed the order of appointing Advocate



Commissioner. In the opinion of this Court, such order cannot be passed.

10. In view of the above, this Civil Revision Petition stands allowed. The order dated 22.11.2016 in I.A.No.997 of 2014 in O.S.No.152 of 2013 passed by the learned District Munsif, Thiruvallur, is set aside and I.A.No.997 of 2014 stands dismissed. Consequently, connected Miscellaneous Petition is closed. No Costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The District Munsif Court
Thiruvallur.

+1cc to Mr.J. Ravikumar, Advocate, S.R.No.30182

CRP(PD) No.614 of 2017
and
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RSV(CO)
PM(26/07/2021)