



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.12.2021**

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (MD) No.760 of 2021

and

C.M.P. (MD) No.4140 of 2021

WEB COPY

K.Gurumoorthy

... Petitioner

vs.

1.G.Pravin Kumar

2.C.Vanithamani

3.G.Subbulakshmi

4.M.Muniyandi

... Respondents

PRAYER:- This Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 08.02.2021 made in I.A.No.278 of 2020 in O.S.No.81 of 2020 on the file of the District Munsif Court, Ramanathapuram.

For Petitioner : Mr.A.Arumugam

For R1, R3 & R4 : Mr.T.R.Jeyapalam

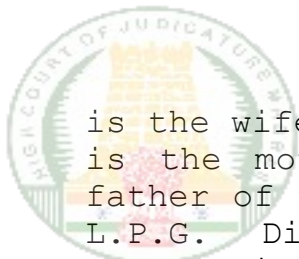
ORDER

The plaintiff is the revision petitioner before this Court. The revision petitioner seeks to have the order in I.A.No.278 of 2020 in O.S.No.81 of 2020 passed by the learned District Munsif, Ramanathapuram set aside. The impugned petition is an application filed for appointment of an Advocate Commissioner.

2.The brief facts are as follows:-

3.The petitioner/plaintiff had filed a suit in O.S.No.81 of 2020 for bare injunction restraining the defendants 3 and 4 from interfering with his peaceful possession and enjoyment of the suit property except under due process of law, declaring that the unregistered partnership deed dated 22.05.2019 concocted by the defendants 1 and 2 is null and void and not binding on the plaintiff and consequently, granting permanent injunction restraining the defendants 1 and 2 from interfering with the administration of the plaintiff's business in the name and style of Mugavai Indane Gas Agency.

4.The plaintiff had filed the about suit stating that the plaintiff and the defendants are close relatives. The 1st defendant is the son of the maternal uncle of the plaintiff, the 2nd defendant



is the wife of the maternal uncle of the plaintiff, the 3rd defendant is the mother of the 1st defendant and the 4th defendant is the father of the 3rd defendant. The plaintiff had been selected to run L.P.G. Distributorship at Ramanathapuram by the Indian Oil Corporation Limited. On 17.08.2016, the plaintiff had entered into a lease deed with the 3rd defendant in respect of the first schedule of property, which was a vacant site for the construction of the show room and a lease deed was also executed for a period of 15 years. Rent was fixed at Rs.500/- per month and a sum of Rs.1,000/- was paid as advance. The plaintiff was permitted to construct a superstructure thereon.

5. Thereafter, the plaintiff had entered into a lease deed with the 4th defendant in respect of the second schedule of property for constructing the Godown. A lease deed was executed and the lease period was for 15 years. After the execution of the lease deed, the property was delivered into the possession of the plaintiff, who had constructed the superstructure on the 'A' and 'D' schedule of properties. The plaintiff has also availed a loan from the defendants 1 and 2 on various occasions as hand loan.

6. The plaintiff would submit that for the purpose of the loan, he had signed and handed over several unfilled stamp papers and blank papers to the defendants 1 and 2. However, the same was not returned on the repayment of the loan. But considering the close relationship, the plaintiff had not insisted on its return. Difference of opinion occurred between the plaintiff and the defendants 1 and 2, which led the defendants 1 and 2 in trying to take over the administration of the plaintiff's business. The defendants 1 and 2 have now instigated the respondents 3 and 4 to demand the vacant possession of the property, in which, the plaintiff has spend considerable amount for construction. Therefore, the plaintiff had come forward with the above application.

7. The defendants had filed a written statement refuting the contentions made by the plaintiff. Thereafter, the defendants had come forward with an application in I.A.No.278 of 2020 for appointing an Advocate Commissioner to take the assistance of the Surveyor, measure the suit properties and submit a report. The main basis on which the application has been filed is that while constructing the Godown and the show room, the plaintiff has encroached into the property of the 3rd defendant and therefore, there was a necessity to measure the property, since the plaintiff cannot claim a right on the property belonging to the defendants. The said contention was denied by the defendants. However, the learned Judge proceeded to allow the above application, since there was some force in the argument of the defendants that close to the second item of the property, the petitioner has encroached into the property on the respondents. This order is the subject matter of challenge before this Court.



8.The primary argument advanced by the learned counsel for the petitioner was that the suit is one for bare injunction and therefore, the appointment of an Advocate Commissioner is not necessary to a suit for permanent injunction. They would further submit that there was no necessity to measure the property, since the parties were all partners and the construction had been put up when they were working together. Now, when the parties have fallen out, the present petition has been filed only as a form of harassing the petitioner. Therefore, they sought for dismissal of the order passed by the learned District Munsif, Ramanathapuram in I.A.No.278 of 2020 in O.S.No.81 of 2020.

9.Mr.T.R.Jeyapalam, learned counsel appearing on behalf of the respondents 1, 3 and 4 on the contrary would contend that the main basis for seeking the appointment of an Advocate Commissioner is only to measure the properties, since it now appears that the plaintiff has encroached into the property of the defendants/respondents herein. If the encroachment is not noted, later the defendants may not be in a position to recover the same, if it is found that the plaintiff has encroached into the respondent's property and put up construction.

10.Heard the learned counsels on either side.

11.It is an admitted fact that the constructions have been put up in the property belonging to the respondents/defendants, which has been leased out to the firm. The land has been leased out, whereas, the building has been put up by the plaintiff. The respondents/defendants would submit that while constructing, it appears that a portion of their property has been encroached into. The Advocate Commissioner's application is moved only for measuring the suit property and to verify whether any encroachment in the construction put in thereon. No prejudice is going to be caused to the petitioner/plaintiff, if the Commissioner goes and measures the property. Therefore, the objections of the plaintiff/petitioner is unfounded. I do not find any reason to interfere with the order passed in I.A.No.278 of 2020 in O.S.No.81 of 2020 by the learned District Munsif, Ramanathapuram.

12.In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



To

The District Munsif,
Ramanathapuram.

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+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-39669[F] dated
21/12/2021)

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MGJ(31.12.2021) 4P 3C