



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.04.2021

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P(MD).No.748 of 2021 and
CMP(MD).No. 4072 of 2021

Kumaravel : Petitioner

Vs

1.Kannan
2.M.Subramanian
3.Muniyammal
4.Valli
5.Lingam
6.M.Subramanian
7.Ibrahim
8.Kanniammal

: Respondents

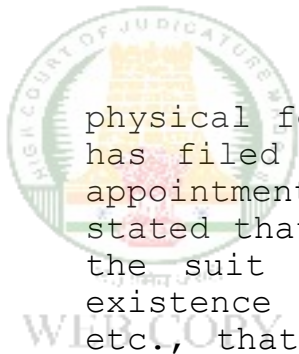
PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 02.03.2021 made in I.A.No. 115 of 2020 in O.S.No. 200 of 2019 on the file of the District Munsif - Cum - Judicial Magistrate, Kadaladi.

For petitioner : Mr. S. Srinivasa Raghavan

ORDER

This revision is directed against the order passed in I.A.No. 115 of 2020 in O.S.No.200 of 2019 dated 02.03.2021 on the file of the District Munsif - Cum - Judicial Magistrate, Kadaladi, dismissing the application filed under Order 26 Rule 9 CPC for appointment of Commissioner.

2. The first respondent / plaintiff has filed a suit in O.S.No. 200 of 2019 claiming permanent injunction restraining the defendants therein and their men from interfering with his peaceful possession and enjoyment of the suit property. The defendants 1 to 7 after filing of the written statement, have filed an application under 26 Rule 9 CPC seeking appointment of Commissioner to measure the suit property, as per the Revenue Records with the help of Taluk Surveyors and find out the measurements, boundaries and other



physical features. The first defendant / revision petitioner herein has filed an affidavit in support of the petition filed for the appointment of Commissioner and whereunder, he has specifically stated that the plaintiff has filed the suit as if the two items of the suit properties are dry lands and thereby, suppressing the existence of buildings, cattle shed, fencing, various trees, well etc., that the 5th defendant by constructing a concrete house in a portion of the suit property, has been residing therein for the past several years, that he has raised fencing with stone pillars and thorn wire, that he has also put up cattle shed and raised various tress, that the first defendant had dug the well in the suit property, that the other defendants have been enjoying the other portion of the suit property with the separate boundaries and that therefore, the suit properties are to be measured with the help of Surveyor in the presence of Advocate Commissioner.

3. As already pointed out, the suit is for bare injunction restraining the defendants from interfering with the possession of the plaintiff and as such, the plaintiff in order to get the relief, he is duty bound to prove his possession and the cause of action alleged by him.

4. It is settled law that no Commissioner can be appointed to note down the possession of the properties and the parties to be lis are duty bound to prove their possession through the evidence adduced by them and not through the appointment of Commissioner. Considering the above, it is clear that the above petition has been filed to measure the properties and to show the physical features of the suit property but with the hidden agenda to show the possession of the properties. Hence, the decision of the trial Court dismissing the application for appointment of Commissioner cannot be found fault with and consequently, this Court is not inclined to admit the revision.

5. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

trp



To

The the District Munsif - Cum - Judicial Magistrate,
Kadaladi.

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+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-18244[F] dated
30/04/2021)

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