



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **08.12.2021**

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

C.R.P. (MD) No.1402 of 2021
and
C.M.P. (MD) No.7900 of 2021

G.Duraisamy ... Petitioner

vs.

1.Rajammal

2.Rani ... Respondents

PRAYER:- This Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.3 of 2021 in O.S.No.66 of 2020 dated 19.03.2021 on the file of the learned 1st Additional District Munsif, Tirunelveli.

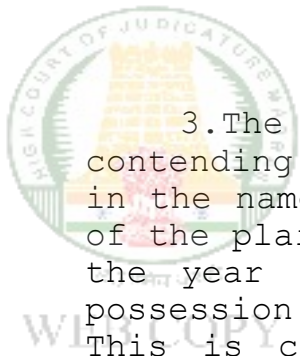
For Petitioner : Mr.K.Esakki

For Respondents : No appearance

ORDER

The plaintiff, whose application for appointment of an Advocate Commissioner had been dismissed by the learned 1st Additional District Munsif, Tirunelveli, is the revision petitioner before this Court.

2.The petitioner had filed the suit O.S.No.66 of 2020 for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the property. It is the case of the plaintiff that in the year 1964 ie., on 28.12.1964, one Rajaiah had purchased the property and had been in possession and enjoyment of the same. Thereafter, by sale deed dated 09.09.1998, the plaintiff had purchased the said property. A residential house is situated in the said property bearing Old D.No.3/17 (new D.No.4/225). From the date of his purchase, the plaintiff has been in possession and enjoyment of the same. All of a sudden, the defendants, who are strangers, were attempting to disturb the plaintiff's possession and enjoyment of the property and they have also been making an application to the Zonal Deputy Inspector of Land Survey, Tirunelveli to measure the property. This interference has prompted the plaintiff to file the above suit.



3.The defendants had filed a written statement *inter alia* contending that the property tax in respect of the property stands in the name of the plaintiff's father, Ghanaiah and not in the name of the plaintiff, though he claims to have purchased the property in the year 1998. The contention of the plaintiff that he is in possession for over 20 years of the suit property was also denied. This is clearly established by the fact that the plaintiff has produced tax receipts standing in the name of his father even as late as in the year 2018-2019.

4.The defendants would make counter allegations that from the year 2016, the plaintiff's brothers have attempted to interfere with the defendants' peaceful possession and enjoyment of the property. The defendants would further submit that the electricity payment receipts would not contain the name of the plaintiff or his father, but would only describe the payee as 'Tharmakartha', which would go to show that there was a temple in the suit property. The plaintiff had never resided in the suit property and no document has been produced to prove the possession. The defendants would submit that the Surveyor had noted the encroachment of 6 cents of lands by the plaintiff and his brothers. The defendants therefore sought to have the suit dismissed.

5.Pending the suit, the plaintiff had come forward with the impugned petition to note down the physical features, since the defendants had denied the lying location of the suit schedule properties and since the defendants had stated that the plaintiff had encroached into the suit defendants' property. The said petition had been dismissed by the learned 1st Additional District Munsif, Tirunelveli stating that there cannot be an appointment of an Advocate Commissioner in a suit for bare injunction and that no exception of circumstances have been set out.

6.Heard the learned counsels on either side and perused the records.

7.The suit is one for bare injunction. It is the case of the plaintiff that he is in possession and enjoyment of the property. The application for appointment of an Advocate Commissioner is sought for only on the ground that the respondents in their written statement had contended that the plaintiff and his brother have encroached into their land. This cannot be a ground to have the Advocate Commissioner appointed to note down the physical features of the suit property. The plaintiff, who claims to be in possession of the property, should prove the same independently and not through the Advocate Commissioner to gather evidence on his side. The learned Judge has rightly dismissed the petition and I do not find any reason to interfere with the same.



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

Sd/-

Assistant Registrar (W)

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/ /2022

Sub Assistant Registrar(CS)

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To

The 1st Additional District Munsif,
Tirunelveli.

+1 CC to M/s.K.ESAKKI, Advocate (SR-37894[F] dated 09/12/2021)

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MGJ(28.01.2022) 3P 3C