



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.(PD) (MD) No.710 of 2016

and

C.M.P.(MD) No.3305 of 2016

Arungobinath

.. Petitioner/Respondent/
Plaintiff

-vs-

1.Samuvel
2.Thangasamy Nadar
3.Saasthakani @ Kannan
4.Sudalaimada Nadar
5.Selvin

.. Respondents/Petitioners/
Defendants

Prayer :- Petition filed under Article 227 of the Constitution of India to set aside the order in I.A.No.680 of 2014 in O.S.No.268 of 2012 dated 25.03.2015 on the file of the Additional District Munsif Court, Ambasamudram.

For Petitioner : Mr.R.Ponkarthikeyan

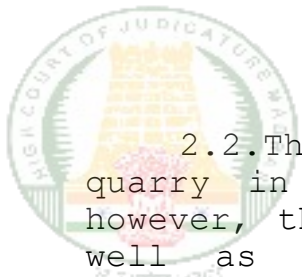
For Respondents : Mr.R.J.Karthick

ORDER

The plaintiff is the revision petitioner before this Court challenging the order dated 25.03.2015 in I.A.No.680 of 2014 in O.S.No.268 of 2012 on the file of the Additional District Munsif, Ambasamudram.

2.The facts in brief are as follows:-

2.1.The petitioner/plaintiff had filed the suit in O.S.No.268 of 2012 on the file of the Additional District Munsif, Ambasamudram for a bare injunction restraining the defendants from interfering with the quarrying work being conducted by him in the suit property peacefully.



2.2.The plaintiff would submit that he is operating a stone quarry in the suit schedule property observing all norms, but however, there has been a constant interference in his business as well as enjoyment of the suit property by the defendants. Therefore, left with no other alternative, the plaintiff has been constrained to file the suit.

2.3.The plaintiff would also submit that he has a registered lease to run the said quarry from 11.06.2012 to 10.06.2022, which fact was denied by the defendants.

3.The defendants had filed their written statement stating that the stone quarry operation is causing a great deal of noise pollution in the surrounding area. The defendants would further submit that the operation of the stone quarry is within the 300 metre prohibited area adjoining a residential locality. Therefore, they sought for dismissal of the suit.

4.Pending the suit, the defendants took out an application for appointment of an Advocate Commissioner to measure the properties lying within the 300 metre area around the suit property and to submit a plan showing the physical features therein.

5.The plaintiff had resisted the said application stating that in the writ petition filed by the 3rd defendant in W.P.(MD) No.11577 of 2012, this Court had refused to appoint an Advocate Commissioner. Therefore, the present petition seeking appointment of an Advocate Commissioner is a sure abuse of process of court.

6.Heard the learned counsel on either side.

7.The plaintiff has come forward with the suit for a bare injunction restraining the defendants from interfering with his operation of the stone quarry in the suit schedule property. The defendants have stated that the distance between the stone quarry and the residential area is less than 300 metre and therefore, within the prohibited area. In order to assess the above fact, he had sought for appointment of an Advocate Commissioner to note down the above fact. Admittedly, even as per the extant rules, the stone quarry cannot be situated within the 300 metre radius of a residential locality. The defendants would contend that the stone quarry is situate within this prohibited area. In order to assess truth of the same, the learned Additional District Munsif, Ambasamudram has allowed the application and appointed an Advocate Commissioner. This Court is of the opinion that no exception can be taken to the above.

8.In view of the above, this Civil Revision Petition is dismissed and the order dated 25.03.2015, passed in I.A.No.680 of



2014 in O.S.No.268 of 2012 of the learned Additional District Munsif, Ambasamudram, is confirmed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The Additional District Munsif,
Ambasamudram.

Copy to:

The Section Officer,V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

C.R.P.(PD) (MD) No.710 of 2016

Dated: 06.12.2021

MGJ(28.12.2021) 3P 4C