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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) No.1877 of 2021

and

C.M.P. (MD) No.10067 of 2021

Samlawin

.. Petitioner/Petitioner/
Plaintiff

-vs-

Mansingh

.. Respondent/Respondent/
Defendant

Prayer :- Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 24.02.2021 passed by the First Additional District Munsif Court, Tirunelveli in I.A.No.3 of 2020 in O.S.No.435 of 2019.

For Petitioner

: Mr.F.X.Eugene

ORDER

The plaintiff is the revision petitioner challenging the order dated 24.02.2021, passed by the I Additional District Munsif, Tirunelveli dismissing the application filed by the plaintiff in I.A.No.3 of 2020 for appointing an Advocate Commissioner to note down the physical features of the suit property.

2.The brief facts, which have given rise to the above petition, are as follows:-

2.1.The plaintiff has filed O.S.No.435 of 2019 on the file of the I Additional District Munsif, Tirunelveli for a bare injunction restraining the respondent/defendant from interfering with his peaceful possession and enjoyment of the property.

2.2.The plaintiff's contention was that the superstructure, which he had purchased for a valuable consideration, had fallen down on account of it not being maintained and the defendant, who is an utter stranger to the suit property, claimed a right to the property by creating fabricated documents. The plaintiff, therefore, was constrained to file the suit. Pending the above suit, the impugned application was filed. The plaintiff would seek to have an Advocate Commissioner appointed in order to note down the fact that the remnants of the original building were available on the land, which according to the plaintiff would prove that he is the owner of the property and the Court would be able to come to the right conclusion as to who is in possession of the property.



3.The respondent had objected to the said application stating that he is in exclusive possession and enjoyment of the properties since 02.09.1980 and the plaintiff cannot be permitted to prove possession through an Advocate Commissioner's report.

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4.The learned I Additional District Munsif, Tirunelveli on hearing the parties and perusing the records, had dismissed the application aggrieved by which, the petitioner is before this Court.

5.Heard the learned counsel for the petitioner.

6.In paragraph 4 of the affidavit filed in support of the impugned application, the plaintiff had stated as follows:-

"4.The remnants in the suit property will clearly go to show that I am the owner of the property and hence a Commissioner is to be appointed to note down the physical features of the suit property with the help of the Surveyor and to submit a detailed report about the various physical features of the suit property. Such report of the Commissioner will enable this Court to come to a correct conclusion regarding the controversy between the parties. Further, the report of the Court will enable this Honourable Court to come to a correct conclusion and it will also minimise the letting of oral evidence by me."

7.A mere reading of the affidavit filed in support of the application would clearly demonstrate that the plaintiff is seeking appointment of the Advocate Commissioner only for the purpose of noting down the possession of the property. The appointment of an Advocate Commissioner is anathema to a suit for bare injunction, unless there is some exceptional circumstances. Perusal of the affidavit filed in support of the application would clearly demonstrate that there is no such exceptional circumstances in the instant case. Therefore, the order of the learned I Additional District Munsif, Tirunelveli in I.A.No.3 of 2020, dated 24.02.2021 cannot be found fault with and the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

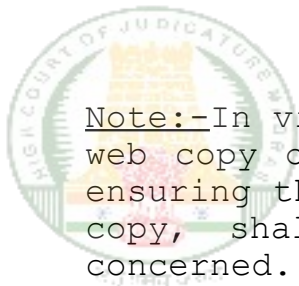
Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)



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.

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To
The I Additional District Munsif Court,
Tirunelveli.

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.F.X.EUGENE, Advocate (SR-36850
[F] dated 01/12/2021)

C.R.P.(PD) (MD) No.1877 of 2021

Dated: 30.11.2021

AC (CO)
GC (06.01.2022) 3P 5C