



C.R.P. (PD) No.356 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P. (PD) No.356 of 2022
and C.M.P.No.1844 of 2022

Munisamy

...Petitioner

Vs.

1.The Block Development Officer,
Panchayat Union,
Pennagaram.

2.The Tahsildar,
Pennagaram.

3.The District Collector,
Dharmapuri

4.Anbu @ Anbalagan

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair order and decreetal order in I.A. No.405 of 2019 in O.S. No.54 of 2017 on the file of the District Munsif cum Judicial Magistrate, Pennagaram dated 22.03.2021 as illegal, incompetent and without jurisdiction.



For Petitioner : Mr.V.Raghavachari
For Respondents : Ms.Ahila Rajendran
1 to 3 Government Advocate

ORDER

The plaintiff has filed the above revision, challenging the dismissal of his application for appointing an Advocate Commissioner to visit the suit land comprised in Survey No.256, draw a plan and note down the physical features.

2. The brief facts are as follows;

(i) The petitioner has filed the suit O.S. No.54 of 2017 on the file of the District Munsif Court, Pennagaram for declaration of his possessory rights to the suit poramboke land comprised in Survey No.256, measuring an extent of 20 cents and for an injunction restraining the first defendant viz., the Block Development Officer, Panchayat Union, Pennagaram from evicting him from the suit property or in any other manner disturbing his possession and to declare the Eviction Notice dated 21.08.2017 issued by the first



defendant as null and void.

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(ii) It is the case of the plaintiff that the suit schedule property, which has been described as “A, B, C and D” in the plaint belonged to him absolutely and it was a patta land. Adjacent to the patta land, which is comprised in Survey No.56/2 on the Western side, there was a Poramboke land comprised in Survey No.256 and in this Survey number, the plaintiff's father had occupied 20 cents of land 60 years ago, which has been marked as “C, D, E and F” in the plaint plan. The plaintiff's case is that the said land was being used by his father and later himself by initially put up a thatched shed. Since then it has been removed, a pucca house was constructed thereon. The petitioner was also paying 2 A charges to the Government. Along with the plaintiff, there were others, who were also in occupation of the Government poramboke land. While so, the fourth defendant, who is a stranger to the property, attempted to disturb his possession, which constrained him to file a suit O.S. No.54 of 2017 on the file of District Magistrate, Pennagaram. To wreak vengeance on the plaintiff, the



fourth defendant had filed a false application in respect of the suit property before the first defendant and on the basis of this complaint, the impugned notice dated 21.08.2017 was issued by the first defendant, directing the plaintiff to demolish and remove the encroachments in the suit schedule property. The plaintiff would submit that he has been in possession of the property for over six decades and that his possession has to be protected and therefore, the suit.

3. The second defendant/The Tahsildar, Pennagaram has filed the written statement stating that the plaintiff, ten years ago had encroached into the Government land and put up a tiled house. The portion in his occupation is a "pattai (road) poramboke". Since the house constructed, was a hindrance to the traffic and for future road widening, the notice had been issued. They denied the contention of the plaintiff that he has been in occupation of the property for over six decades. They have also questioned the maintainability of the suit.



This written statement had been adopted by the third defendant as well.

4. Thereafter, the plaintiff had filed the impugned petition viz., I.A. No.405 of 2019 for appointing an Advocate Commissioner. The reason for seeking the appointment of Advocate Commissioner was that the second defendant, in his written statement, stated that for widening of the road in the suit land, the plaintiff has to be evicted. However, there is no mentioning about the other occupants of this land. Therefore, the Commissioner has to visit and measure the suit land and note down the physical features thereon and file a report.

5. The fourth defendant had filed his counter, resisting the said application.

6. The learned District Munsif-cum-Judicial Magistrate, after



hearing the parties, had dismissed the said suit on the ground that the petitioner cannot use an Advocate Commissioner for fishing or gathering evidence for the party and it is for the plaintiff to prove his case independent of the Commissioner's report. This order is subject to challenge before this Court.

7. Heard Mr.V.Raghavachari, learned counsel for the petitioner and Ms.Ahila Rajendran, learned Government Advocate appearing for the respondents 1 to 3.

8. The petitioner/plaintiff has himself admitted that the suit property is a "poramboke land". The suit is filed for declaring his possessory right to the same and for an injunction restraining the first defendant from interfering his possession and to consequently declare the Eviction Notice dated 21.08.2017 as null and void.

9. The defendants had filed written statement stating that the



suit property is a "pattai poramboke" viz., road poramboke. A perusal of the suit schedule property in the plaint would also indicate the same. The suit schedule property has been described within boundaries. Therefore, there is no necessity for appointing an Advocate Commissioner. Since there is no quarrel about occupation of the suit property by the plaintiff, the plaintiff has moved the suit questioning the Eviction Notice issued by the first defendant to establish his case. The plaintiff has to therefore prove the same by independent evidence and not use the services of the Advocate Commissioner to gather evidence for him. Hence, the Trial Court has rightly dismissed the said application. I see no reason to interfere with the same.

10. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

16.02.2021

Index : Yes/No



C.R.P. (PD) No.356 of 2017

Speaking Order : Yes / No
srn

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To

1. The I Additional District Judge,
Tiruppur
2. The Section Officer,
VR Section, Madras High Court,
Chennai.



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J



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P.T. ASHA,

ab/srn

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