



C.R.P. No.1901 of 2020 & CMP No.11611 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2022

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.R.P. No.1901 of 2020
& CMP No.11611 of 2020

1. Lakshmanan
2. Ganesan
3. Karthik
4. Palanisamy
5. Ramamoorthy

... Petitioners

Vs.

1. Rajammal
2. Gopu

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 09.09.2020 made in I.A. No.01 of 2019 in O.S. No.264 of 2017 on the file of the Additional District Munsif Court, Tiruchengode.

For Petitioners : M. V. Subramanian
for M/s. Dass and Viswa Associates

For Respondents : Ms. N. Mohanapriya
for Mr. E.P. Senniyangiri



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C.R.P. No.1901 of 2020 & CMP No.11611 of 2020

ORDER

This revision petition is filed against the fair and decreetal orders dated 09.09.2020 made in I.A. No.01 of 2019 in O.S. No.264 of 2017 on the file of the Additional District Munsif Court, Tiruchengode.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court in the Original Suit.

3. The revision petitioners are the defendants in O.S.No.264/2017 on the file of the Additional District Munsif, Tiruchengode. The respondents/plaintiffs filed the suit for a bare injunction against the revision petitioners/defendants restraining the latter from interfering with their peaceful possession and enjoyment of the suit property, which is morefully described in the plaint schedule as Plot No.22, Survey No.193/4 of Koothampoondi village, Tiruchengode Taluk, Namakkal District. The defendants filed their written statement and also filed an application in I.A. No.1/2019 under Order XXVI Rule 9 and



C.R.P. No.1901 of 2020 & CMP No.11611 of 2020

Section 151 CPC seeking to appoint an Advocate Commissioner to note down the physical features and locate the petition mentioned property by measuring the same with the help of a qualified surveyor. The respondents/plaintiffs filed a counter and after full contest, the learned Additional District Munsif, Tiruchengode, dismissed the said application vide his orders dated 09.09.2020 on the ground that the petitioner cannot be permitted to collect evidence through an Advocate Commissioner which is against the settled principles of law.

4. Aggrieved over the same, the present Civil Revision Petition is filed by the defendants.

5. Heard M. V. Subramanian, learned counsel appearing for the revision petitioners and Ms. N. Mohanapriya, learned counsel for the respondents.



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6. Learned counsel appearing for the revision petitioners contended that Plot No.22 belongs to the plaintiffs and Plot No.1 belongs to the defendants and in between these two properties there is a site bearing Plot No.21 which belonged to one Vijaya. His further contention is that the plaintiffs are constructing a house in Plot No.21 and also attempting to trespass into the property of the defendants which is in Plot No.1. Therefore, in order to locate the property, an Advocate Commissioner has to be necessarily appointed.

7. Per contra, learned counsel appearing for the respondents drew the attention of this Court to paragraph 4 of the counter filed by the respondents/plaintiffs wherein it is averred thus:

"4. This respondent submits that the petitioners/defendants herein are clearly and categorically admit that the plot No.22 in natham S.No.193/4 of Koothampoondi Village belong to the respondents/defendants. The petitioners/defendants would



falsely allege that the respondents/plaintiffs had constructed their house in plot No.21 which belongs to one Vijaya by occupying the same. If at all the respondents/plaintiffs had encroached any portion of the land belongs to Vijaya, she never be a silent spectator all these years. Further more admittedly the petitioners have nothing to do with the plot No.21 and 22. So the petitioners did not make out a case for appointment of advocate/commissioner to measure the suit properties"

She would further contend that the Additional District Munsif after considering the rival submissions of both the parties had rightly dismissed the application filed by the defendants seeking for appointment of an Advocate Commissioner.

8. At the outset it may be observed that the suit was filed for a bare injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property. The



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suit property is in Plot No. 22 and according to the defendants the plaintiffs are constructing a house in Plot No.21 which belongs to one Vijaya. In the written statement filed by the defendants it is contended that on 23.10.2017 the plaintiffs attempted to trespass into their property which is Plot No.1 and the same was successfully prevented by them. The written statement further mentions about the various complaints lodged by the plaintiffs and the defendants before the police. It is the specific contention of the counsel for the revision petitioners that the plaintiffs have filed the suit in order to grab the property of the defendants and that in order to locate the property of the plaintiffs and the defendants, appointment of an Advocate Commissioner is absolutely necessary.

9. It is seen from the written statement that even according to the defendants, the attempt made by the plaintiffs to encroach upon the land in Plot No.1 has been successfully prevented by them. As already observed, the suit is filed for a bare injunction by the plaintiffs and in



C.R.P. No.1901 of 2020 & CMP No.11611 of 2020

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order to prove the possession over the same, they have to adduce sufficient oral and documentary evidence. Appointment of an Advocate Commissioner is not at all necessary since even as per the plaint and the written statement there is no dispute over the identity of the suit property. It is settled proposition of law that the court should not appoint an Advocate Commissioner for taking measurements of the suit properties in a mechanical manner without considering the need for appointment of an Advocate Commissioner. Admittedly in the instant case, there is no doubt about the area, identification or location of the land and therefore, the trial court had rightly dismissed the application filed under Order XXVI Rule 9 CPC.

10. I do not see any infirmity in the orders passed by the trial court and therefore the present Civil Revision Petition is liable to be dismissed.



C.R.P. No.1901 of 2020 & CMP No.11611 of 2020

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11. In the result,

- i. the Civil Revision Petition is dismissed. No costs. Consequently connection miscellaneous petition is dismissed.
- ii. The fair and decretal orders dated 09.09.2020 made in I.A. No.01 of 2019 in O.S. No.264 of 2017 on the file of the Additional District Munsif Court, Tiruchengode, is upheld.
- iii. Since the suit is of the year 2017, the learned Additional District Munsif, Tiruchengode, is directed to proceed with the trial and dispose of the same as expeditiously as possible.

20.10.2022

Index : Yes/No

Internet : Yes/No

Speaking/non speaking
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C.R.P. No.1901 of 2020 & CMP No.11611 of 2020

R.HEMALATHA, J.,
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To

1. The Additional District Munsif, Tiruchengode.
2. The Section Officer, VR Section, High Court, Madras.

C.R.P. No.1901 of 2020
& CMP No.11611 of 2020

20.10.2022