



CRP.(PD).No. 4685 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.(PD).No. 4685 of 2017

and

CMP.No.22047 of 2017

Kanakaraj

.. Petitioner

Versus

1.Ponnusamy

2.Kandasamy

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 06.11.2017 made in I.A.No. 615 of 2017 in O.S.No. 345 of 2008 on the file of District Munsif Court, Udumalpet.

For Petitioner : Mr.J. Pothiraj

For Respondents : Notice served



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ORDER

This Civil Revision Petition has been filed to set aside the order dated 06.11.2017 made in I.A.No. 615 of 2017 in O.S.No. 345 of 2008 on the file of District Munsif Court, Udumalpet.

2. None appeared on behalf of the respondents.

3. Heard the learned counsel for the revision petitioner and perused the materials placed on record.

4. On perusal of the records, it is seen that the petitioner/plaintiff filed the suit in O.S.No.345 of 2008 before the District Munsif Court, Udumalpet, for permanent injunction from restraining the defendants from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property. In reply, the defendants denying the allegations by way of filing written statement before the Court below. During the pendency of the suit proceedings, the petitioner/plaintiff filed



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I.A.No.615 of 2017 under Order 26 Rule 9 of CPC seeking for appointment of an Advocate Commissioner to note down the age of the trees planted in the suit cart track and physical features of the suit property. After perusing the records, the trial Court dismissed the application by order dated 06.11.2017 on the ground that the said application was filed after eight years, to drag on the proceedings and barred by limitation. Challenging the same, the present revision is filed by the petitioner/plaintiff. The contention of the revision petitioner/plaintiff is that the Court below ought to have seen that there is no limitation prescribed for appointing the Commissioner the prayer in the suit and has misconstrued the Limitation Act, that there is a limitation of three years for seeking Advocate Commissioner by way of mandatory injunction, which is totally incorrect, as the limitation is only for execution of the decree of mandatory injunction. Therefore, the suit was of the year 2008 and now, the suit is posted for trial. Therefore, an Advocate Commissioner is required to note down the physical features of the suit property to prove the petitioner's case by way of mandatory injunction and to resolve the civil dispute between the parties. However, no prejudice would be caused to the respondents/defendants herein if this revision is



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allowed. Hence, this Court is inclined to set aside the findings of the trial Court and the same is liable to be allowed.

5. Accordingly, the Civil Revision Petition is allowed. The order dated 06.11.2017 passed in I.A.No. 615 of 2017 in O.S.No. 345 of 2008 on the file of District Munsif Court, Udumalpet. is hereby set aside. Liberty is granted to the respondents/defendants herein to file additional written statement if any. The trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order.

19.10.2022

msm

Index : Yes/No

Speaking Order : Yes/No

To

1. The District Munsif Court, Udumalpet.
2. The Section Officer, V.R.Section

High Court, Madras.



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T.V.THAMILSELVI, J.

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