



CRP(PD)(MD)No.1481 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 25.07.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.1481 of 2022

Bothuraja

... Petitioner

Vs

1.Arulmigu Maalaikovil,
Usilampatti Village,
Vadipatti Taluk,
Madurai District.
On behalf of its villagers
Represented by

1.V.Chandran
2.M.Periyampalai
3.P.Subramani
4.V.Muthuraja
5.N.Nagaiyya
6.R.Krishnan

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.1261 of 2021 in O.S.No. 202 of 2013, dated 14.03.2022, on the file of the learned District Munsif, Vadipatti.

For Petitioner : Mr.K.Muralidharan



WEB COPY



CRP(PD)(MD)No.1481 of 2022

ORDER

This Civil Revision Petition is filed as against the order of the learned District Munsif Court, Vadipatti in I.A.No.1261 of 2021 in O.S.No. 202 of 2013, dated 14.03.2022.

2.The suit in O.S.No.202 of 2013 has been filed by the plaintiffs for the relief of declaration and for recovery of possession, before the District Munsif cum Judicial Magistrate Court, Vadipatti. The petitioner is the defendant in the suit. When the suit was posted for defendant's side evidence, I.A.No.1261 of 2021 has been filed by the defendant/petitioner, under Order XXVI Rule 9 of Civil Procedure Code, seeking an appointment of Advocate Commissioner. The trial Court dismissed the said application. Aggrieved over the same, the petitioner is before this Court.

3.The learned counsel appearing for the petitioner submits that the petitioner is in occupation of suit 'B' schedule property for more than 60 years, wherein, he has also raised certain crops. According to the learned counsel for the petitioner, in order to prove that the petitioner is cultivating



CRP(PD)(MD)No.1481 of 2022

crops in 'B' suit schedule property for more than 60 years, appointment of Advocate Commissioner is necessary and hence he has taken out the Interlocutory Application, under Order XXVI Rule 9 of Civil Procedure Code. However, the trial Court, without considering the same dismissed the said application and hence, the order of the trial Court has to be set aside.

4.This Court considered the submissions of the learned counsel for the petitioner and also perused the materials placed on record. Since no adverse order is going to be passed as against the respondents, notice to them is dispensed with.

5.The case of the plaintiff is that suit 'B' schedule property belongs to Government, wherein, during COVID -19 period, the petitioner encroached upon and has raised certain crops. The petitioner's father has filed several suits and appeals with respect to suit 'B' schedule property and all the suits and appeals were dismissed by the Courts concerned. As against the dismissal orders, no Second Appeal has been preferred by the petitioner as on date. According to the plaintiffs, in order to create revenue records in



CRP(PD)(MD)No.1481 of 2022

favour of the defendant /petitioner, he encroached upon the subject land and raised certain crops very recently.

6.The trial Court has held that in order to substantiate that the petitioner/defendant is in occupation of suit 'B' schedule property and he is cultivating crops in that land, no documents including revenue records have been produced by him. Moreover, it is the specific stand of the respondents that only during COVID-19 pandemic period, the petitioner encroached upon the subject property and raised certain crops over there. The trial Court observed that the main suit itself is pending for more than 9 years, the application filed by the petitioner seeking appointment of Advocate Commissioner at the time of examination of defendant's side evidence is only to drag on the suit proceedings alone and finally dismissed the application filed by the petitioner.

7.This Court is of the view that whether the petitioner is in occupation of the subject land for more than 60 years or whether he is cultivating in that land is not an issue to be decided in the Interlocutory



CRP(PD)(MD)No.1481 of 2022

Application and the same has to be decided only in main suit and hence this

Court is not inclined to interfere with the order of the trial Court.

Accordingly, this Civil Revision Petition is dismissed. No costs.

25.07.2022

Index : Yes / No.

Internet : Yes / No.

vrn

To

The District Munsif, Vadipatti.



WEB COPY



CRP(PD)(MD)No.1481 of 2022

B.PUGALENDHI, J.

vrn

Order made in
CRP(PD)(MD)No.1481 of 2022

25.07.2022