



CRP(MD)No.1982 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 16.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(MD)No.1982 of 2019
andCMP(MD)No.10219 of 2019

Sudhir Chandrakumar

... Petitioner

versus

1. L.J.Sajam

2. Jeya

... Respondents

Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 29.08.2019 passed in I.A.No.2 of 2019 in O.S.No.120 of 2019 on the file of the learned Subordinate Judge, Kuzhithurai.

For Petitioners : M/s.S.J.Anandhavalli

For Respondents : Mr.B.Christopher

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 29.08.2019 passed in I.A.No.2 of 2019 in O.S.No.120 of



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2019 on the file of the learned Subordinate Judge, Kuzhithurai.

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2. The petitioner, who is the plaintiff in O.S.No.120 of 2019, has filed the above interlocutory application in I.A.No.2 of 2019 under Order 26 Rule 9 C.P.C. to appoint an Advocate Commissioner to note down the damages made by the respondents/defendants in the suit schedule property, by cutting down the trees. By order dated 29.08.2019, the said application was dismissed by the trial Court, holding that there is a serious dispute with regard to the ownership of the property and the respondents/defendants are also claiming that they are in possession and enjoyment of the property and therefore, the dispute can be addressed only after a full-fledged trial. Aggrieved over the same, the present Civil Revision petition is filed.

3. The learned counsel appearing for the petitioner submits that the property originally belonged to Gnanasikhamony, father of the petitioner. The petitioner's father and mother, during their life time,



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jointly executed a Will dated 18.09.1996 in favour of the petitioner and his brother Jeyakumar. Under the Will dated 18.09.1996, 'A' schedule property was allotted to Jeyakumar and 'B' schedule property was allotted to the petitioner. The petitioner's brother, Jeyakumar, by way of a Will dated 14.12.2007, conveyed his right over the property to the petitioner. After the death of his brother Jeyakumar, on 31.05.2019, the respondents/defendants attempted to disturb his possession and therefore, he filed the above suit for injunction against the respondents/defendants. He has also filed an application for interim injunction. On receipt of summons in I.A.No.1 of 2019 on 26.06.2019, the defendants accompanied by hooligans and trespassed into the plaint schedule property and also cut down and removed the valuable rubber trees and other trees from the suit schedule property. Therefore, the petitioner/plaintiff has filed the above interlocutory application under Order 26 Rule 9 C.P.C. to appoint an Advocate Commissioner. In order to establish that the respondents/defendants cut down and removed the valuable trees from the suit schedule property and to



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assess the damages, the appointment of Advocate Commissioner is necessary and only through the Advocate Commissioner, it can be established. Therefore, he prays for allowing this petition.

4. The learned counsel appearing for the respondents submits that the petitioner claims title through one Jeyakumar. The first respondent/first defendant is the wife of the said Jeyakumar. The said Jeyakumar obtained the property through a Will dated 18.09.1996 executed by his father and mother jointly. The said Jeyakumar's mother one Navaretnam died only on 07.01.2013 and thereafter only, the Will dated 18.09.1996 will come into effect. But, the petitioner/plaintiff is claiming title through the Will dated 14.12.2007 which was executed by his brother Jeyakumar, during the life time of his mother and even before the Will dated 18.09.1996 came into effect. Therefore, the petitioner/plaintiff is not having any right over the property and the respondents/defendants are in possession of the property.



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5. This Court considered the rival submissions made and also perused the materials available on record.

6. The suit was originally filed by the petitioner/plaintiff for the relief of permanent injunction. The petitioner/plaintiff, by claiming that pending the suit, the respondents/defendants with hooligans entered into the suit schedule property and also cut down and removed the rubber trees in the suit schedule property. The petitioner/plaintiff is claiming title over the property through a Will dated 14.12.2007, which was executed by his brother Jeyakumar. The said Jeyakumar has also derived title through a Will dated 18.09.1996 executed by his father and mother jointly. According to the respondents, the petitioner/plaintiff's mother died only on 07.01.2013 and thereafter only, the Will dated 18.09.1996 will come into effect and this so-called Will dated 14.12.2007 was executed, even before the Will dated 18.09.1996 came into effect. There are serious disputes with regard to



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ownership. The respondents/defendants have also claimed that they are in possession of the property. Therefore, this Court is of the view that the appointment of Advocate Commissioner would certainly amount to collection of evidence. Hence, this Court is not inclined to entertain this Civil Revision Petition.

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

16.11.2022

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Index : Yes / No.

Internet : Yes / No.

To

1. The Subordinate Court,
Kuzhithurai.



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B.PUGALENDHI, J.

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