



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.01.2022

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THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P (MD)No.2297 of 2017

and

C.M.P (MD) No.11132 of 2017

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Muniammal

... Petitioner/Petitioner/Plaintiff

Vs.

1.Malaikannan

2.Samidurai

3.Raaku

4.Kunjaram

5.Kannadhasan

... Respondents/Respondents/Defendants

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to fair and decreetal order dated 28.06.2017 made in I.A.No.387 of 2017 in O.S.No.114 of 2015 on the file of the learned District Munsif, Devakottai and set aside the same and allow the present civil revision petition.

For Petitioner : Mr.J.Anandkumar

For Respondents : No appearance

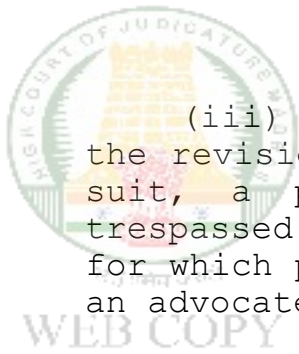
ORDER

Aggrieved by the dismissal of her application for appointing an advocate commissioner to inspect the petition premises, the plaintiff is before this Court.

2.The facts in brief are as follows:-

(i) The suit in O.S.No.114 of 2015 was filed by the revision petitioner/plaintiff on the file of the learned District Munsif, Devakottai, for a declaration of her title to the suit property and for a permanent injunction restraining the defendants. their men or agents from interfering with her peaceful possession and enjoyment of the property.

(ii) The second respondent/second defendant had filed his written statement, in which, he had contended that the plaintiff had no right, title or interest to the suit schedule property. The petitioner is the daughter of the aunt of respondents 1 and 2. The revision petitioner is also not the resident of the suit village, but is residing at Vellagudi village. The first respondent is in enjoyment of the suit property by cultivating the same. On 26.12.2012, the revision petitioner was given in marriage by her parents as early in the year 1970. Thereafter, when the matter was due for trial the plaintiff /revision petitioner has come forward with the impugned petition.



(iii) In the affidavit filed in support of the said petition, the revision petitioner would contend that after the filling of the suit, a portion of the suit property had been encroached / trespassed into by the respondents and this has to be noted down, for which purpose, the revision petitioner sought for appointment of an advocate commissioner.

(iv) The learned District Munsif, Devakottai, by order dated 28.06.2017, was pleased to dismiss the said application stating that the petition had been filed, when the matter was at the stage of trial and that apart, no reason whatsoever has been given in the affidavit filed in support of the petition warranting the appointment of an advocate commissioner. Challenging the same, the revision petitioner is before this Court.

3.The learned counsel appearing for the petitioner would contend that after filing of the suit, the respondents had encroached the suit property and the purpose for seeking appointment of the advocate commissioner, was only to note down this subsequent event and to submit his report. He would argue that no prejudice is going to be caused to the respondents, if the petition is so ordered.

4.The respondents, though served, have not entered appearance. Heard the learned counsel for the petitioner and perused the records.

5.The revision petitioner has filed the suit for a declaration of her title and for consequential injunction. In the affidavit, the petitioner/plaintiff would contend that after filing of the suit, the respondents/defendants had encroached into the suit property. However, the petitioner has given no details whatsoever to show the date of the alleged trespass, the area into which the defendant have trespassed etc. Therefore, it is amply clear that the petitioner is only seeking to gather evidence through the advocate commissioner. This cannot be permitted. Therefore, the learned Judge has rightly dismissed the application and I do not find any reason to reverse the said order.

6.In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

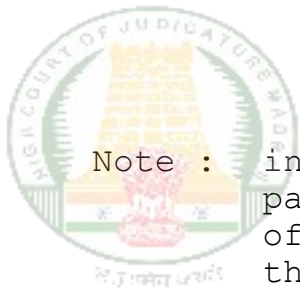
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Sub Assistant Registrar(CS)

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Note : in view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

WEB COPY

To:-

The District Munsif,
Devakottai.

+1 CC to M/s.J.ANANDKUMAR, Advocate (SR-3207[F] dated 31/01/2022)

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28.01.2022

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