



C.R.P.No.379 of 2018

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.379 of 2018
and
C.M.P.No.2033 of 2018

B.Prakasam

...Petitioner

Vs.

Haseena Begam

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree made in I.A.No.1043 of 2016 in O.S.No.109 of 2013 on the file of the District Munsif, Tambaram, Kanchipuram District dated 24.11.2017.

For Petitioner : Mr.S.Vijayakumar

For Respondent : Mr.R.Sankarakutralingam
-No Appearance

ORDER

This Civil Revision Petition has been filed against the dismissal of the application filed under Order 16 Rule 1 of C.P.C.



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2.The plaintiff is the petitioner. The suit is one for bare injunction. In the said suit, an Advocate Commissioner was appointed and she has also submitted a report. The petitioner wanted witness summons to be sent to the Tahsildhar, Head Surveyor, Village Administrative Officer, the Advocate Commissioner, the Assistant Engineer(Highways Department) and the Sub-Registrar, Selaiyur for the purpose of examination in the suit.

3.The learned Trial Judge dismissed the application holding that the witness summon need not be issued as this suit is only for bare injunction. In a suit for bare injunction, the Court does not go into the question of title. The only issue the Court is concerned is, whether the plaintiff is in lawful possession and enjoyment of the property. For that purpose, the Court need not summon revenue records and the documents sought for by the petitioner in I.A.No.1043 of 2016. It is the duty of the petitioner to produce the revenue records, after applying for certified copies of the same. The Court need not issue a summon in order to enable the party to secure evidence. It is the duty of the party to produce the evidence. Hence, the application is not maintainable.



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4.However, I am not in agreement with the learned District Munsif in dismissing the application in its entirety. The District Munsif should have sent summon under Order 26 Rule 10 Sub-clause 2. A party is always entitled to summon an Advocate Commissioner appointed by the Court for cross-examination on his/her report. Therefore, this Civil Revision Petition is partly allowed, permitting the petitioner to cross-examine the Advocate Commissioner alone in terms of Order 26, Rule 10 Sub-clause 2 of C.P.C.

5.With respect to the other reliefs, the Civil Revision Petition is dismissed. It is open to the petitioner to produce the revenue records and other records, which he sought to summon by obtaining certified copies from appropriate authorities. In case the certified copies are not furnished and not available, he may move an application under Rule 75 of the Civil Rules of Practice. For the said purpose, it is not necessary to issue a summon to examine the parties as witness.



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6.This Civil Revision Petition is partly allowed. No costs.

Consequently, connected miscellaneous petition is closed.

30.08.2023

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Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

Nuetral Citation : Yes/No



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To:-

The District Munsif, Tambaram,
Kanchipuram District.



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V.LAKSHMINARAYANAN, J.

KKN

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