



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.07.2023

CORAM

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.3139 of 2019
and
C.M.P.No.20541 of 2019

1.Vijaya
2.Dhamotharan ...Petitioners

Vs.

Dhandapani ...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to allow this Civil Revision Petition, setting aside the order in I.A.No.1407 of 2017 in O.S.No.88 of 2013 order dated 06.07.2019 passed by the District Musnif Court, Dharmapuri.

For Petitioners : Mr.T.Ganesan
For Respondent : Mr.P.Ganesan



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ORDER

This Civil Revision Petitioner is the defendant in the suit. The suit is for declaration and for permanent injunction. It is the case of the defendant that he purchased the property from the father of the plaintiff and has constructed a house and he is in possession and occupation of the same.

2. Pending the suit, he moved an application for appointment of an Advocate Commissioner to note down the physical features of the suit property.

3. Learned Counsel for the petitioner would submit that he was constrained to move such an application because the evidence of PW2, the Village Administrative Officer was to the effect that the property remains a vacant land. This, he says, will seriously prejudice the case of the defendant as he has constructed a house and has been in occupation of the same and has been paying property tax for several years.

4. An Advocate Commissioner is appointed, it should be where there is dispute in identity of the property. In the present case, there is no dispute in the identity, but as to who is having the actual possession of the property.



The mere fact that the Village Administrative Officer has stated that the property is vacant does not mean that the property becomes vacant. It is always open for the plaintiff to let in evidence to show that he has constructed a house, I am sure if such evidence is let in, the Trial Court will consider it in proper perspective, documentary evidence from proper custody will be given due weight age.

5. In any event, it is for the plaintiff to prove his case and not for the defendant to disprove the case.

6. In light of the above discussion, there being no dispute in the identity of the property, I am not inclined to interfere in the order passed by the court below. The Present Civil Revision Petition stands dismissed. No Costs. Connected Civil Miscellaneous Petition is closed.

11.07.2023

Index : Yes/No
Neutral Citation Case : Yes/No
nst
To:

The District Munsif,
Dharmapuri.



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V. LAKSHMINARAYANAN, J,
nst

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