



C.R.P.(MD)No.664 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 29.11.2023

Delivered on : 08.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(PD)(MD)No.664 of 2023

and

C.M.P(MD)No.3078 of 2023

Rakku : Petitioner/Petitioner/Plaintiff

Vs.

Chinna Ponnu : Respondent/Respondent/Defendant

Prayer : This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 27.07.2022 made in I.A.No.11 of 2021 in O.S.No.50 of 2020 on the file of the District Munsif Court, Paramakudi.

For Petitioner : Mr.P.Senthil

For Respondent : Mr.G.Praba Hari



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ORDER

The Civil Revision is directed against the order passed in I.A.No.11 of 2021 in O.S.No.50 of 2020, dated 27.07.2022 on the file of the District Munsif Court, Paramakudi, dismissing the petition filed under Order 26 Rule 9 of the Code of Civil Procedure.

2. The revision petitioner has filed the suit in O.S.No.50 of 2020 against the respondent claiming permanent injunction restraining the respondent and his men from in any manner interfering with the petitioner's peaceful possession and enjoyment of the suit property.

3. The revision petitioner/plaintiff in the suit has alleged that he has been residing in a tiled house situated in the first schedule of the suit property and he has been paying house tax and electricity consumption charges; that the petitioner has been using toilet and bathroom situated in the second schedule of the suit property; that the petitioner/plaintiff has been in possession and enjoyment of the suit property for the past more than 30 years and that since the respondent/defendant has attempted to



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trespass into the suit property, the petitioner was constrained to file the above suit for permanent injunction.

4. The respondent/defendant has filed an elaborate written statement denying the plaintiff's case and further stated that the first schedule of the property is not situated in S.No.396/15 as alleged by the plaintiff and he is not owning the same; that the property in S.No.396/5 is not situated on the south of the first schedule property; that the plaintiff's alleged possession and enjoyment of the suit property is absolutely false; that the plaintiff has no connection whatever with the suit property and that the above suit has been filed vexatiously and therefore, the suit is liable to be dismissed.

5. Pending suit, the plaintiff has filed the above application seeking appointment of Commissioner alleging that since temporary injunction was not issued in his favour, the respondent and their men are attempting to encroach the suit property and to alter the physical features of the same and that therefore, the Advocate Commissioner has to be appointed to measure the property with the help of a surveyor and Village Administrative Officer and to note down the physical features of the suit property.



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6. The respondent has filed a detailed counter raising serious objections for appointment of Commissioner. The learned trial Judge, after enquiry, taking note of the objections raised by the respondent, has passed the impugned order, dismissing the commission petition.

7. As rightly contended by the learned counsel for the respondent, since the revision petitioner has filed the above suit claiming permanent injunction by alleging that he has been in possession and enjoyment of the suit property for more than 30 years, she has to prove his possession through the acceptable evidence.

8. As rightly contended by the learned counsel for the respondent, the revision petitioner by getting a Commissioner's report with regard to the physical features of the property, is attempting to show her possession. It is settled law that no commission can be appointed to show the possession of the property. It is also settled law that a party cannot be allowed to gather/collect evidence through the Commissioner's report and plan.



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9. The learned trial Judge, by specifically observing that the Court cannot allow the petitioner for collecting evidence in the form of Advocate Commissioner's report and plan and that the reasons assigned by the petitioner for appointment of commissioner are not satisfactory, has rightly dismissed the petition.

10. Considering the entire facts and circumstances of the case, nature of the suit, defence taken by the other side and the reasons assigned by the revision petitioner for appointment of Commissioner, the impugned order dismissing the commission petition cannot be found fault with. Hence, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

11. In the result, the Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs

08.12.2023

NCC :yes/No
Index :yes/No
Internet:yes/No
das



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To

- 1.The District Munsif Court,
Paramakudi.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre- delivery order made in
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Dated : 08.12.2023