

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.03.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.793 of 2023

Ilamparuthi

...Petitioner/Petitioner/
Plaintiff

Vs.

Ramasamy

...Respondent/Respondent/
Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records relating to the fair and decreetal order in I.A.No.283 of 2022 in O.S.No.90 of 2022 dismissed on 04.01.2023 on the file of the Learned District Munsif Court, Paramakudi, Ramanathapuram District, set aside the same.

For Petitioner : Mr.A.Vadivel

ORDER

The petitioner is the plaintiff before the District Munsif Court, Paramakudi in O.S.No.90 of 2022. The said suit has been filed by the petitioner for bare injunction to restrain the respondents from interfering with the peaceful possession of the property allegedly taken by the petitioner on lease on 13.04.2022 from TELC Church property.

2. In the said proceedings, the petitioner filed I.A.No.283 of 2022 under Order 26 Rule 9 of C.P.C to appoint an Advocate Commissioner to inspect the property and physical features of the property. The trial Court has dismissed the application with the following observations:

"C. I have considered both side submissions. This petition of appointing advocate commissioner is filed to identify the suit property as the respondent claims that he is lawful owner of it. The main suit is filed by the petitioner for bare injunction against the defendant on the basis of lease deed executed by TELC on 13.04.2022. Therefore it is for the petitioner who has to prove that he is lessee and has been possession of the suit property through document or oral evidence. To decide the fact in issue, it is enough for the petitioner to prove his lawful possession. The necessity of appointing advocate commissioner is to fine out physical feature or identification of the suit property for easy conclusion of the suit. In this case, the identification of property is not in dispute rather the respondent claims that he is lawful owner and TELC had nothing to do with it. Hence considering facts and circumstances of the case, appointing advocate commissioner in this suit is not necessary for the reasons stated in the petition."

3. The suit has been filed only for bare injunction. Therefore, appointment of an Advocate Commissioner to collect evidence cannot be permitted. The petitioner has to prove his case regarding peaceful possession over the property by letting any oral and documentary evidence. The application filed by the petitioner has been rightly rejected by the trial Court and therefore calls for no interference under Article

227 of the Constitution of India.

4. Therefore, the present Civil Revision Petition filed by the petitioner is liable to be dismissed and accordingly dismissed. It is left open to the petitioner to file appropriate application for interim injunction and also to expedite the trial before the Trial Court. No costs.

24.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1.The District Munsif Court, Paramakudi.
Ramanathapuram District.

2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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C.SARAVANAN,J.

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