

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.03.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.814 of 2023

and

CMP(MD)No.3727 of 2023

Gajendran

...Petitioner/Petitioner/Plaintiff

Vs.

Srinivasan

... Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the impugned order passed in I.A.No. 2/2021 in O.S.No.257 of 2021 dated 23.01.2023 on the file of the District Munsif Court, Lalgudi.

For Petitioner : Mr.V.Karthikeyan

ORDER

This petition has been filed to set aside the impugned order passed in I.A.No.2/2021 in O.S.No.257 of 2021 dated 23.01.2023 on the file of the District Munsif Court, Lalgudi.

2.The petitioner is the plaintiff in O.S.No.257 of 2021. In the above suit, the petitioner had filed I.A.No.2 of 2021 under Order 26 Rule 9 of CPC for appointment of an Advocate Commissioner to inspect the suit property and to note down the physical features of the suit property and to file a report with plan.

3.It is submitted that the Trial Court has erroneously dismissed the application on the ground that the issue can be resolved only by on oral and document evidence not by appointing an Advocate Commissioner.

4.In this connection, the learned counsel for the petitioner has placed reliance of a decision of the Karnataka High Court in **Sri Shadaksharappa Vs.Kumari Vijayalaxmi and Others** in **W.P.No. 201274 of 2022**. The learned counsel for the petitioner drawn attention of paragraphs 21 and 23 of the said decision wherein guidelines have been given to the Trial Court by the Karnata High Court.

5.I have considered the argument advanced by the learned counsel for the petitioner.

6.The decision of the Karnataka High Court though deals with the some what identical facts relating to the suit for a bare injunction, it is evident that the decision has been given in the light of the decision of the Hon'ble Supreme Court in **M.P.Rajya Tilhan Utpadak Sahakari Sangh Maryadit Vs. Modi Transport Service**. Wherein the Hon'ble Supreme Court has held as follows:-

“35.Order XXVI Rule 9 of the code gives wide powers to the Court to appoint a Commissioner to make local investigations which may be requisite or proper for elucidating any matter in dispute, ascertaining the market value of any property, an account of mesne profit or damages or annual net profits.”

7.The Hon'ble Supreme Court has given its decision in the contest when there was a dispute, regarding the market value of the property, mesne profit, damages and annual net profits. The Court has not deviated well settled principal of law. In a case for bare injunction, it is for the plaintiff to establish the evidence either through document or by letting oral evidence.

8.In my view, the Trial Court has rightly come to the conclusion in rejecting the application for appointment of an Advocate Commissioner. The District Munsif Court, Lalgudi, is directed to dispose the case in

O.S.No.257 of 2021 preferably within a period of 12 months from the date of receipt of a copy of this order.

9.The civil revision petition stands dismissed with the above observations. No costs. Consequently, the connected miscellaneous petition is closed.

27.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
dss

To

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

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C.SARAVANAN,J.

dss

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