



C.R.P(MD).No.1111of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.1111 of 2023

and

C.M.P(MD).No.5360 of 2023

Durai Balasundaram Through
his Power Agent
B.Mohan Kumar

... Petitioner/Defendant

Vs.

Thanjavur Chamber of Industries

... Respondent/Plaintiff

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records relating to the impugned fair and decreetal order dated 12.12.2022 and made in IA No. 268 of 2022 in OS No. 392 of 2017 on the file of Additional District Munsif, Thanjavur, set aside the same and allow the civil revision petition.

For petitioner : Mr.S.Srinivasa Raghavan

ORDER

This Civil Revision Petition has been filed by the petitioner to call for the records relating to the impugned fair and decreetal order dated



12.12.2022 and made in IA No. 268 of 2022 in OS No. 392 of 2017 on the file of Additional District Munsif, Thanjavur, set aside the same and allow the civil revision petition.

2.The Court has rejected the applications with the following observations:-

“ .. from the above provision, An Advocate Commissioner can be appoint only to dissolve the dispute regarding measurement, encroachment in the suit property. This suit has been field for the permanent injunction against the petitioner/defendant. There is no disputes regarding measurement, encroachment etc. Main issue is whether the petitioner is in the lawful possession or not in the suit. It can be decide only in trial. Now trial commenced in this case and posted for PW1 cross, in these circumstance the appointment commissioner is not necessary. Hence, this Court not inclined to allow the petition.”

3.The petitioner is the defendant in O.S.No.392 of 2017 filed by the respondent. The suit has been filed by the respondent for a bare injunction to restrain the petitioner (defendant therein) from interfering with the peaceful possession of the suit schedule property. In the suit, the petitioner has also filed a written statement and disputed the title.



4.The petitioner has no documents to substantiate the petitioner is the owner of the property. Only case of the petitioner appears to have the petitioner is in the possession of the property. The petitioner claims to have put up a compound wall and therefore wanted an Advocate Commissioner to be appointed to inspect and to give a report under Order 26 Rule 9 of CPC which has been rejected. It is submitted that the Trial Court has committed a grave error in rejecting the application filed by the petitioner for appointing an Advocate Commissioner under Order 26 Rule 9 of CPC dated 12.12.2022.

5.I have considered the argument advanced by the learned counsel for the petitioner and I have perused the impugned order passed by the learned Additional District Munsif, Thanjavur.

6.In my view, the case did not warrant appointment of an Advocate Commissioner to give a report. The petitioner has not disputed the measurement and encroachment. The petitioner has no document to establish the petitioner is having right in the suit schedule property hacked by a registered sale deed. The office of an Advocate Commissioner cannot be allowed to collect evidence. It is for the petitioner to prove possession by



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letting in evidence. The reason given in the impugned order is correct.

Dismissal of the application filed by the petitioner therefore cannot be interfered. Therefore, this Criminal Revision Petition is liable to be dismissed.

7.The Additional District Munsif, Thanjavur is directed to frame the issues. After frame the issues, dispose the suit as early as possible preferably within a period of 12 months from the date of receipt of a copy of this order.

8.With the above direction, this Civil Revision Petition is dismissed.
No costs. Consequently, the connected miscellaneous petition is closed.

25.04.2023

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

To

1.The Additional District Munsif,
Thanjavur.

2.The Record Keeper,
V.R. Section,



Madurai Bench of Madras High Court,
Madurai.

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C.SARAVANAN,J.

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