



CRP(MD).No.1369 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.09.2023

CORAM

THE HON'BLE MR.JUSTICE **C.KUMARAPPAN**

CRP(MD).No. 1369 of 2019 and
CMP(MD).No. 7341 of 2019

C. Solai

Petitioner / plaintiff

Vs.

1.S. Palanisamy
2.M.Periyar

Respondents / defendants

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 09.07.2019 passed by the District Munsif Cum Judicial Magistrate, Thirumayam, Pudukottai District in I.A.No.77 of 2018 in O.S.No.9 of 2018

For Petitioner : Mr.T. Lenin Kumar

For Respondents 1 & 2 : Mr.A. Arun Prasad

ORDER

This Civil Revision Petition has been filed against the fair and



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decreetal order, dated 09.07.2019 made in I.A.No.77 of 2018 in O.S.No.9 of 2018 on the file of the District Munsif Cum Judicial Magistrate, Thirumayam, Pudukottai District.

2. The revision petitioner herein is the petitioner / plaintiff before the trial Court. The respondents herein are the respondents / defendants before the Court below.

3. For the sake of convenience, the parties will be referred as per the litigative status before the trial Court.

4. The brief facts of the case which give rise to the instant Civil Revision Petition is that, the plaintiff has filed the suit for the relief of permanent injunction in respect of the “A” and “ B” schedule properties.

5. According to the plaintiff, “A” schedule property is his ancestral property. He would further submit that the “B” schedule property was originally belonged to the first defendant's father and he has leased out the same to the plaintiff's father. As such the plaintiff has been



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in actual physical possession and enjoyment of the suit property.

6. During the pendency of the suit, the plaintiff filed an application for appointment of an Advocate Commissioner to note down the physical features, on the ground that the appointment of Advocate Commissioner would help them to prove the “A” and “B” Schedule properties situated in one block and also to prove the existence of pipe line connection between “A” and “B” Schedule property.

7. However, the learned counsel appearing for the defendants would submit that there is no proof to show the lease between the plaintiff's father and the respondent, and that only to prove the possession of the property, the plaintiff has moved the commission application. The Court below after hearing both sides has ultimately dismissed the application with the finding that the application has been filed only to prove possession.

8. Aggrieved with the said order, the plaintiff has come forward with this revision before this Court.



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9. The learned counsel appearing for the plaintiff would submit that the plaintiff has moved an application only to note down the physical features and not to prove the possession, and also would submit that if the Commissioner is appointed then, he could find out physical features and pipe line connection between “A” and “ B” schedule properties, and that much of the oral evidence would be obviated and therefore, prayed for appointment of an Advocate Commissioner.

10. The learned counsel for the defendants would submit that, the plaintiff has not submitted any proof to show that the “B” schedule property is in his possession, therefore, only to overcome the such demerits, the plaintiff moved an application for appointment of an Advocate Commissioner to prove the possession.

11. I have given my anxious consideration to the submissions of the learned counsel appearing on either side and perused the materials available on record.

12. The suit was filed only for injunction. There is no dispute in respect of the identity of the property. Further drawing of issue water



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from “A” schedule property to “B” schedule property is not the fact in issue. Hence, under the disguise of ascertaining the physical feature, the petitioner is attempting to prove his possession and enjoyment of “A” and “B” schedule properties. But, as rightly submitted by the learned counsel for the defendants / respondents herein that there is no material available as of now to show that the plaintiff's right over the “ B” schedule property.

13. Further, the Court below has found that the very application for appointment of Commissioner has been filed only to prove the possession. As a matter of fact, this Court could not find any material to deviate from the finding rendered by the Court below. Hence, there is no scope for interference with the well considered order passed by the learned trial Judge.

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

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Index : Yes / No
Internet : Yes / No
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To

The District Munsif Cum Judicial Magistrate, Thirumayam, Pudukottai
District



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C.KUMARAPPAN, J.,

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