



CRP(MD).No.2889 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2023

CORAM

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

CRP(MD).No. 2889 of 2018 and
CMP(MD).No.12482 of 2018

Kuzhithurai Integral Development Social Services,
Rep. by its Executive Director,
Thedel Buildings
Bridge Road,
Kuzhithurai, Kuzhithurai Post,
Kuzhithurai Village,
Vilavancode Taluk,
Kanyakumari District.

Petitioner

Vs.

1.The Ponmalai Thirumalai Potters
Co-op Cottage Industrial Societies Ltd.,
KVL NGL-56,
Rep. By president

2.The Ponmalai Thirumalai Potters
Co-op Cottage Industrial Societies Ltd.,
KVL NGL-56,
Rep. By Secretary.

3.The Ponmalai Thirumalai Potters
Co-op Cottage Industrial Societies Ltd.,
KVL NGL-56,
Rep. By Treasurer

Respondents



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PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order, dated 03.02.2018, made in I.A.No.161 of 2014 in O.S.No.58 of 2014, on the file of Subordinate Judge, Padmanabhapuram.

For Petitioner : Mr.S.C.Herold Singh

For Respondents 1 & 2 : Mr.C.Kishore

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order, dated 03.02.2018, made in I.A.No.161 of 2014 in O.S.No. 58 of 2014, on the file of Subordinate Judge, Padmanabhapuram.

2. The revision petitioner herein is the plaintiff before the trial Court. The plaintiff has filed a suit against the defendants in respect of the relief of declaration and for recovery of possession, and also sought for permanent injunction restraining the defendants from constructing any building. While the suit was pending, the petitioner has come forward with an application for appointment of an Advocate Commissioner to note



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down the physical features of the property.

3. It is submitted by the learned counsel appearing for the petitioner that the defendants have filed a memo adopting the written statement as a counter statement to the commission application.

4. On perusal of the written statement, it is seen that, though the plaintiff has pleaded that the defendants have encroached into the suit schedule properties, according to the defendants contention, it is their property and that they have been in lawful possession over the same. They have also contended that the plaintiff has no manner of right over the same. In such circumstances, the learned Trial Judge has dismissed the commission application on the ground that there is no dispute in respect of the identity of the property. In such circumstances, the learned Trial Judge found that the appointment of an Advocate Commissioner to note down the physical features is not warranted.

5. The learned counsel appearing for the petitioner would submit that, the learned trial Judge failed to note that the defendants have put up a construction totally concealing the original construction put up by the petitioner. It is also the submission of the learned counsel for the petitioner that the impleading or striking of parties to the suit has no



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bearing in the commission application. Hence, prayed to dismiss this petition.

6. However, the learned counsel appearing for the respondents would submit that the order passed by the learned Trial Judge is a well considered one.

7. I have heard the learned counsel appearing on either side and perused the materials on record.

8. From the perusal of the plaint, the same is for the relief of declaration and for consequential relief of recovery of possession. According to the plaint averments, the defendants have encroached upon the suit schedule properties, which according to the plaintiff is their absolute property. However, in the written statement which has been treated as a counter statement for the Commission Application, the defendants in uncertain terms have categorically admitted that the suit schedule properties are their absolute properties and they are in possession and enjoyment of the suit property and also mentioned about some constructions put up by them over the suit property.



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9. Therefore, as rightly found by the learned trial Judge when the defendants have admitted the possession of the property, in the event of plaintiff succeeds in the suit, then the plaintiff may have the possession with all improvements made by the defendants. Therefore, the finding of the trial Court that there is no necessity for appointment of commission is based upon sound rational. Hence, this Court does not find any infirmity in the order passed by the trial Court.

10. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

11. At this juncture, the learned counsel appearing for the plaintiff seeks indulgence of this Court for issuing direction to the Court below to dispose of the suit within a time frame. He would further submit that now, the case was transferred to Sub Court, Eraniel and re-numbered as O.S.No.80 of 2018.

12. Therefore, this Court directs the learned Subordinate Judge, Eraniel to dispose of the suit pending on its file as expeditiously as



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possible, within the time frame of six months from the date of receipt of a copy of this order. The parties are directed to co-operate with the disposal of the suit within the time frame fixed by this Court. Registry is directed to mark the Copy of this order to the Sub Court, Eraniel.

24.07.2023

Index : Yes / No
Internet : Yes / No
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To

1. The Subordinate Judge, Padmanabhapuram.
2. The Sub Court, Eraniel.

C.KUMARAPPAN, J.,

trp



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