



C.R.P(MD)No.1994 of 2017

WEB CO BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

C.R.P(MD) No.1994 of 2017

and

C.M.P(MD) No.10035 of 2017

Joe Fernandez

...Petitioner

Vs.

Hendritha Mary @ Santha Nirmal

...Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 24.08.2017 made in I.A.No.254 of 2017 in O.S.No.268 of 2015 on the file of the I Additional District Munsif Court, Kuzhithurai, and allow this Civil Revision Petition.



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For Petitioner : Mr.M.R.Sreenivasan

For Respondent : Mr.G.Ramanathan

ORDER

This Civil Revision Petition is filed against the order dated 24.08.2017 made in I.A.No.254 of 2017 in O.S.No.268 of 2015 on the file of the I Additional District Munsif Court, Kuzhithurai.

2. The Revision Petitioner is the plaintiff and the respondent is the defendant in the suit in O.S.No.268 of 2015 on the file of the I Additional District Munsif Court, Kuzhithurai, filed for permanent injunction.

3. Heard Mr.M.R.Sreenivasan, learned counsel for the petitioner and Mr.G.Ramanathan, learned counsel appearing for the respondent and perused the material available on record.



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4. The respondent/defendant filed counter stating that the suit is resisted by filing written statement by the respondent. At that stage, the petitioner filed an application under Order 26 Rule 9 and Section 151 of Code of Civil Procedure to appoint an Advocate Commissioner in the suit. The Court below after hearing both sides, dismissed the said application in I.A.No.254 of 2017 by order dated 24.08.2017. Assailing the same, the present Civil Revision Petition is filed.

5. The learned counsel for the petitioner submits that the Court below failed to consider the affidavit filed by the petitioner that the attempt of the defendant to trespass and alteration of physical features of the property. He would submit that the Court below failed to consider the scope of the order under Order 26 Rule 9 of Code of Civil Procedure and in a catena of cases the Hon'ble Apex Court and this Court categorically held that appointing an Advocate Commissioner for the purpose of inspecting the property and submit his report on physical features and measurements, etc.



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6. The learned counsel further submits that as per the averments made in the written statement itself proves that the appointment of the Advocate Commissioner is very much required for proper adjudication of the suit and sought to allow the Civil Revision Petition.

7. On the other hand, the learned counsel appearing for the respondent submits that the Court below passed a reasoned order by recording its findings and as such interference of this Court is not warranted and sought to dismiss the Civil Revision Petition.

8. Having heard the submissions of the respective counsels and upon careful perusal of the material available on record, it appears that the suit is filed for bare injunction against the respondent. The claim of the petitioner is that he is the absolute owner of plaint 'B' schedule property having an extent of 10 cents in Resurvey No.545/12 and 14 of Kollemcode Village and he is in peaceful possession and enjoyment over the said property.



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9. Admittedly, there is no dispute with regard to identification of the property. It appears that there is no any allegation about the boundary dispute also. The reasons stated before the Court below by the petitioner seeking for appointment of Advocate Commissioner is that for effective adjudication of the suit only. The Court below came to a conclusion that as the suit is filed for bare injunction and the main issue in the suit would be whether the plaintiff is in possession of the suit schedule land or whether there was any attempt made to interfere with the possession of the plaintiff. Formal opinion that in the suit for permanent injunction, an Advocate Commissioner cannot be appointed to find out the factum of possession of the parties and accordingly, the interlocutory application of the petitioner for appointment of Advocate Commissioner was dismissed.

10. On careful perusal of the reasons recorded in the Court below for dismissal of the interlocutory application, this Court is of the opinion that the order passed by the Court below is in



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accordance with law and there is no any illegality or infirmity in passing such order. It appears that the petitioner making an attempt to gather evidence about his possession by appointing an Advocate Commissioner to note down the physical features of the property. As such this Court is not inclined to interfere into the reasoned order passed by the trial Court.

11. The learned counsel for the petitioner has relied on the order of this Court in *B.Amutha Vs. Anandhi Sankara Narayana* reported in **2016 (5) L.W. 658** wherein, it is held that absolutely there is no prejudice would be caused to the respondent/defendant by appointing an Advocate Commissioner for the purpose of inspecting the property and submit his report on physical features, measurements, etc.

12. Considering the said fact in our considered view, the facts are different in the present case, as such it is not applicable to the present case.



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13. For the reasons stated above, this Court is not inclined to interfere into the orders passed by the Court below and accordingly, the Civil Revision Petition is liable to be dismissed.

14. Accordingly, this Civil Revision Petition is dismissed.

15. However, considering the fact that the suit is pertaining to the year 2015 and no progress in the suit from 2017 in the light of the order of interim stay passed by this Court on 10.11.2017. It is very strange to note that though stay is not extended after 08.01.2018, the Court below failed to proceed with the suit proceedings.

16. In view of the same, the learned I Additional District Munsif, I Additional District Munsif Court, Kuzhithurai, is directed to dispose of the Suit in O.S.No.268 of 2015 on its file, as



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expeditiously as possible, but not beyond the period of six months from the date of receipt of a copy of this order.

17. No costs.

18. Consequently, connected Civil Miscellaneous

Petition is closed.

21.11.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
RM



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To
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The I Additional District Munsif,
I Additional District Munsif Court,
Kuzhithurai.



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BATTU DEVANAND, J.

RM

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