



C.R.P.(MD)No.2720 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 31.10.2023

PRONOUNCED ON: 24.11.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2720 of 2023

and

C.M.P.(MD)No.14191 of 2023

Pandi @ Dhanalakshmi

: Petitioner/Petitioner/
Plaintiff in counter claim

Vs.

1.Seethalakshmi
2.Pothiraj
Muthusamy Naicker(died)
3.Manickavasagam
4.Nagajothi
5.Jeyakodi
6.Dhanapalan

: Respondents/Respondents

PRAYER:- Civil Revision Petition is filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 27.06.2023, passed in I.A.No.9 of 2023 in O.S.No.28 of 2014, on the file of the Principal District Munsif Court, Aruppukottai.

For Petitioner : Mr.M.Kannan

For Respondents :Mr.Babu Rajendran

caveator for R.1



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C.R.P.(MD)No.2720 of 2023

ORDER

The Civil Revision Petition is directed against the order passed in I.A.No.9 of 2023 in O.S.No.28 of 2014, dated 27.06.2023, on the file of the Principal District Munsif Court, Aruppukottai dismissing the petition filed under Order 26 Rule 9 C.P.C.

2. The first respondent has filed a suit in O.S.NO.28 of 2014 to declare that the suit property is belonging to her and for consequential permanent injunction restraining the defendants and their men from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

3. The defendants 2 and 3 have filed the written statement along with counter claim claiming the reliefs to declare that the suit property is belonging to the defendants 2 and 3 and to hand over the possession of the suit property and for mandatory injunction directing the defendants to remove the encroachments made in the suit property.



C.R.P.(MD)No.2720 of 2023

4. It is not in dispute that the trial was commenced in January 2019, that the plaintiff was cross-examined by the defendants on 15.12.2022, that the plaintiff's side evidence was closed on 05.01.2023, that the case was posted for the defendants' side evidence on 20.01.2023 and again on 30.01.2023 and 28.02.2023 and that when the case was posted for defendants' side evidence on 28.02.2023, the second defendant has filed the above application seeking appointment of Commission.

5. The case of the revision petitioner is that the suit property and the other properties were originally belonging to one Sethu alias Koodappanaicker and after his demise, his sons Ramasamy Naicker and Perumal Naicker entered into an oral partition, that the suit schedule properties were allotted to the share of Perumal Naicker and that the said Perumal Naicker had been in possession and enjoyment of the properties allotted to him since oral partition, by changing his name in the patta and other records. The petitioner is claiming to be the legal heir of Perumal Naicker.

6. It is the further case of the petitioner that during the pendency of the suit, the first respondent/plaintiff, trespassed into the property,



C.R.P.(MD)No.2720 of 2023

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constructed a building therein and hence, the petitioner was constrained to file the counter claim. As rightly pointed out by the learned Counsel for the first respondent/plaintiff, the petitioner has canvassed her reasons for appointment of Commission in paragraph No.5 of her affidavit filed in support of the said petition and the same is extracted hereunder:

“Therefore in order to prove my case and also to place the correct particulars regarding the suit property and to ascertain the portion of encroachment made by the 1st respondent it may lead to a lengthy process of oral evidence and also the number of witnesses to be examined shall be numerous. Therefore in order to minimize the oral evidence and to explain the correct particulars of the suit property and extent of encroachment it is necessary to take a commission of inspection by an advocate commissioner.”

7. The first respondent/plaintiff has filed a counter affidavit raising serious objections for appointment of Commission and further stated that the Commission cannot be appointed for collecting the evidence and that the above petition came to be filed when the case was pending for defendants' side evidence.



C.R.P.(MD)No.2720 of 2023

WEB COPY

8. As rightly pointed out by the learned Counsel for the first respondent/plaintiff, in the counter claim, though the petitioner by alleging that the plaintiff has encroached a portion of the suit property and constructed a building, has claimed the relief of mandatory injunction for removal of encroachments, but in the description of property, the petitioner has not furnished any of the particulars with regard to the encroachment allegedly made and the constructions made therein.

9. It is pertinent to note that the written statement along with the counter claim came to be filed on 13.08.2014, but the present Commission Petition came to be filed on 28.02.2023, nearly after 9 years from the filing of the counter claim. As rightly pointed out by the learned Counsel for the first respondent/plaintiff, if the petitioner is really interested in noting the encroachments allegedly made, she should have filed the Commission Application immediately after the filing of the written statement along with the counter claim or atleast before the commencement of the trial in January 2019. Moreover, as rightly pointed out by the learned Counsel for the first respondent/plaintiff, a perusal of paragraph No.5 of the petitioner's affidavit filed in support of



C.R.P.(MD)No.2720 of 2023

WEB COPY

the Commission Petition, would reveal that the petitioner wanted the appointment of Commission to prove her case and to place the correct particulars regarding the suit property and to ascertain the portion of the encroachment made by the plaintiff. As rightly pointed out by the learned Counsel for the first respondent/plaintiff, it is settled law that no party can be permitted to collect/gather evidence through the Advocate Commissioner's report and the plan. No party is expected to prove their case or defence by an inspection of Advocate Commissioner and the report and the plan filed by him.

10. Considering the above and also the stage at which the Commission Petition came to be filed, the finding of the trial Court that the above petition came to be filed only to drag on the proceedings of the main suit, cannot be found fault with. Hence, this Court concludes that the Civil Revision Petition is devoid of merits and the same is liable to be dismissed.

11. In the result, the Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed.

There shall be no order as to costs. Since the suit is pending from 2014



C.R.P.(MD)No.2720 of 2023

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onwards, the learned trial Judge is hereby directed to complete the trial and dispose of the case as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.

24.11.2023

Index : Yes : No

Internet : Yes : No

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To

1. The Principal District Munsif Court, Aruppukottai.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(MD)No.2720 of 2023

K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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24.11.2023