



C.R.P.(MD) No.2509 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2023

CORAM

THE HON'BLE **MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

C.R.P.(MD) No.2509 of 2022

and

C.M.P.(MD) No.12342 of 2022

Jaya Raj

... Petitioner

Vs.

1.The State of Tamilnadu,
Represented by District Collector,
Kanyakumari District at Nagercoil,
Kanyakumari District.

2.P.Rejeenal

3.Vijayan

4.Rani

5.Sindu Mary

... Respondents

Prayer:- This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decree dated 09.11.2022 passed in I.A.No.3 of 2020 in O.S.No.23 of 2020 on the file of the Principal District Munsif, Padmanabhapuram.

For Petitioner : Mr.S.Muthumalai Raja

For R1 : Mr.G.Suriyananth
Additional Government Pleader



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ORDER

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This Civil Revision Petition has been filed by the petitioner to set aside the order and decree dated 09.11.2022 passed by the learned Principal District Munsif, Padmanabhapuram in I.A.No.3 of 2020 in O.S.No.23 of 2020.

2. The petitioner is the plaintiff in O.S.No.23 of 2020 on the file of the Principal District Munsif Court, Padmanabhapuram. The suit was filed by the petitioner/plaintiff for the relief of permanent injunction restraining the first respondent/first defendant from initiating or taking any action to dispossess the petitioner/plaintiff and other respondents, i.e. second to fifth respondents herein from the suit property.

3. During the pendency of the suit, the petitioner/plaintiff has preferred an application in I.A.No.3 of 2020 under Order 26 Rule 9 and Section 151 of the Code of Civil Procedure, 1908 for appointment of an Advocate Commissioner to measure the suit property and file a report. No counter was filed by the first respondent/first defendant in the said I.A. However, the Trial Court after perusing the records and the averments made in the I.A. dismissed the I.A. *vide* impugned order dated 09.11.2022, against which, the present Civil Revision Petition has been preferred.



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4. The learned counsel appearing for the petitioner/plaintiff would submit that the suit property originally belonging to the Government Natham Poramboke Lands and the petitioner's father Rajayan occupied 75 Cents of land before 80 years and also constructed a house with asbestos sheet.

5. He would further submit that the petitioner's father Rajayan thereafter developed the suit property by cultivating coconut trees and rubber trees. It is further submitted that the first respondent/first defendant issued B-Memo in his favour and the petitioner's father was paying the house tax and obtained Voter ID in the same address and got electricity connection in his name and he was in possession and enjoyment of the suit property for many years.

6. It is further submitted that the first respondent/first defendant thereafter acquired the property of 50 Cents in Survey No.6 of Pechipparai Village for construction of Periyar Samthuvapuram and remaining property of 24.640 Cents was in possession and enjoyment of the petitioner's father.

7. The learned counsel for the petitioner/plaintiff would submit that after demise of the petitioner's father, the petitioner and his mother are in possession



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and enjoyment of the suit property and now the first respondent/first defendant is taking steps to interfere with their peaceful possession and enjoyment of the suit property and also taking steps to evict the petitioner/plaintiff from the suit property.

8. Under these circumstances, the petitioner/plaintiff was constrained to file a suit in O.S.No.23 of 2020 on the file of the Principal District Munsif Court, Padmanabhapuram for the relief of permanent injunction restraining the first respondent/first defendant from initiating or taking any action to dispossess the petitioner/plaintiff and the second to fifth respondents herein from the suit property.

9. During the pendency of the suit, the petitioner/plaintiff filed I.A.No.3 of 2020 for appointment of an Advocate Commissioner to measure the suit property. However, the said I.A. was dismissed by the Trial Court *vide* the impugned order dated 09.11.2022, against which, the present Civil Revision Petition has been preferred.

10. The learned Additional Government Pleader appearing for the first respondent/first defendant would submit that the suit was filed for permanent



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injunction and the survey number of the suit property was wrongly mentioned in the plaint. The correct survey number of the suit property is 6/3 of Pechiparai Village having extent of 0.26.00 Hectares which is classified as Natham Poramboke, i.e. Government Poramboke. He would further submit that since the petitioner's father Rajaiyan was an encroacher of the suit property, B-Memo case was registered against him. Neither the petitioner/plaintiff nor the second to fifth respondents/second to fifth defendants have any right over the suit property and they are liable to be evicted from the suit property.

11. He would further submit that the Advocate Commissioner cannot be appointed for collecting evidence and therefore, the Trial Court has rightly dismissed the I.A.No.3 of 2020 filed by the petitioner/plaintiff in O.S.No.23 of 2020. He would also submit that there is no merit in the present Civil Revision Petition and it is liable to be dismissed.

12. Heard the learned counsel for the petitioner/plaintiff and the learned Additional Government Pleader for the first respondent/first defendant and perused the records.



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13. On perusal of the records, it is noticed that it is a suit for permanent injunction restraining the first respondent/first defendant from initiating or taking any action to dispossess the petitioner/plaintiff and the second to fifth respondents herein from the suit property, and the petitioner/plaintiff also sought for appointment of Advocate Commissioner to measure the suit property and file a report. In the suit filed for permanent injunction, the petitioner/plaintiff is claiming right over the suit property stating that he is in possession and enjoyment of the suit property for many years. It is for the petitioner/plaintiff to prove the possession of the property only by oral and documentary evidence and not through the Advocate Commissioner. Therefore, the Advocate Commissioner cannot be appointed to prove the possession of the plaintiff or to collect evidence. The report of the Advocate Commissioner will not be helpful to resolve the issue in dispute. Only by oral and documentary evidence, it can be elucidated.

14. Therefore, this Court is of the view that the Trial Court has rightly rejected the claim of the petitioner/plaintiff for appointment of an Advocate Commissioner to measure the suit property and file a report. There is no infirmity or irregularity in the impugned order passed by the Trial Court Court.



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WEB COPY 15. Therefore, this Civil Revision Petition is dismissed. No cost.

Consequently, connected Miscellaneous Petition is closed.

24.07.2023

Internet : Yes/No

Index : Yes/No

NCC : Yes/No

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To

1.The District Collector,
Kanyakumari District,
Nagercoil,
Kanyakumari District.

2.The Judge,
Principal District Munsif Court,
Padmanabhapuram.



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K.GOVINDARAJAN THILAKAVADI, J.

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