



WEB COPY



C.R.P(MD).No.2555 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.2555 of 2022

and

CMP(MD)No.12571 of 2022

Nagarajan

... Revision Petitioner/Petitioner/Plaintiff

Vs.

1) Palanisamy

2)Thiruppalli

3)Palaniyammal

... Respondents/Respondents/Defendants

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set-aside the fair and decreetal order dated 28.10.2022 passed in I.A.No.3 of 2022 in O.S.No.66 of 2022 on the file of the District Munsif Court, Keeranur and allow the Civil Revision Petition.

For petitioner : Mr.C.K.M.APPAJI

ORDER

This petition has been filed to set-aside the fair and decreetal order dated 28.10.2022, passed in I.A.No.3 of 2022 in O.S.No.66 of 2022 on the file of the District Munsif Court, Keeranur.



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2.The petitioner is the plaintiff in O.S.No.66 of 2022 before the District Munsif Court, Keeranur.

3.The suit has been filed for a permanent injunction to restrain the respondents/defendants from interfering with the peaceful possession. It is submitted that the respondents/defendants had also given their no objection for appointment of an Advocate Commissioner in the counter filed in I.A.No. 3 of 2022. However, the Trial Court has dismissed the application stating that in a suit for a permanent injunction, it is the duty of the plaintiff to prove possession. The petitioner has failed to give reasons for appointment of an Advocate Commissioner.

4.The learned counsel for the petitioner submits that after the impugned order was passed on 28.10.2022, the respondents/defendants have also filed a written statement. It is submitted that in the written statement, the respondents/defendants have also not given the details as to the basis on which claim rights over the property. Therefore, an Advocate Commissioner should be appointed.

5.There is no representation for the respondents. I have considered the argument advanced by the learned counsel for the petitioner.



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6.In my view, the order passed by the Trial Court rejecting the application filed by the petitioner for appointment of an Advocate Commissioner does not call for any interference. The suit is filed only for bare injunction. When the suit for bare injunction, the petitioner cannot be expect the Court to appoint an Advocate Commissioner under Order 26 Rule 9 of CPC. It is for the petitioner to let in oral and documentary evidence to prove that the petitioner is in possession of the property. Therefore, this Civil Revision Petition is liable to be dismissed.

7.However, considering the fact that the respondents/defendants also filed a written statement on 09.12.2022, the District Munsif Court, Keeranur, is directed to expedite the trial in O.S.No.66 of 2022 as expeditiously as possible.

8.With the above direction, this Civil Miscellaneous Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

29.03.2023

NCC : Yes/No
Index : Yes/No
Internet:Yes/No
dss



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To

The District Munsif Court, Keeranur.



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C.SARAVANAN,J.

dss

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