

C.R.P.(MD).No.1118 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT.

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Dated : 06.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRP(MD).No.1118 of 2012

in

M.P.(MD).No.1 of 2012

Ayyakutty

... Petitioner

Vs.

S.Perumal (Died)

2.Bagavathy

3.Manikandan

4.Sumathu

5.Seethalakshmi

6.Muthukrishnan

7.Umamaheswari

8.Velmurugan

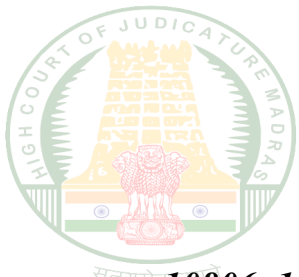
9.Subbiah Doss

10.Parvathi

11.Manju Ayyappan

...Respondents

(the respondent Nos.2 to 11 are also brought on record as Lrs of the deceased sole respondent vide Court order dated 16.02.2024 made in C.M.P.(MD).Nos.



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10806, 10807 and 10810 of 2019 in C.R.P.(MD).No.1118 of 2012)

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PRAYER: Civil Revision Petition has been filed under Articles 227 of the Constitution of India to set aside the order dated 16.02.2012 passed in I.A.No. 682 of 2011 in O.S.No.4 of 2011 on the file of the learned Principal District Munsif cum-Judicial Magistrate, Tiruchendur by allowing this Civil Revision Petition.

For Petitioner : Ms.Jessi Jeeva Priya

For Respondent : Mr.M.P.Senthil

ORDER

This petition has been filed against the order dated 16.02.2012 passed in I.A.No.682 of 2011 in O.S.No.4 of 2011 on the file of the learned Principal District Munsif cum-Judicial Magistrate, Tiruchendur.

2. The plaintiff in the suit filed this revision petition challenging the fair and decretal order passed in I.A.682 of 2011 dated 16.02.2012, filed under Order 26 Rule 9 r/w Section 159 of C.P.C., in favour of the sole respondent/deceased, namely, the defendant in the suit in O.S.No.4 of 2011.



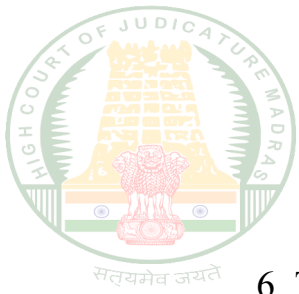
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3.The plaintiff has filed a suit for declaration and injunction against the respondent Nos.2 to 11 and his father, namely, Perumal seeking permanent injunction.

4. In the plaint, it is averred that he obtained a settlement deed from his father Subbiah Konar on 16.12.1993 and after obtaining the settlement deed from his father he constructed a house and he is residing in the said house. At that time, the defendant, namely, the respondents' father Perumal tried to interfere with the possession and hence, he filed a suit for declaration and injunction.

5. The defendant has filed written statement denying the construction of the said house and stated that the house tax receipt was a forged one and hence, he filed an application under Order 26 Rule 9 r/w Section 151 of C.P.C to appoint an Advocate Commissioner to look into the physical feature of the suit scheduled property as there was no such house in the said place.



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6. The plaintiff/petitioner herein filed a counter denying all the allegation, stating that the petition for appointment of Advocate Commissioner was not maintainable on the ground that the said petition was filed after examination of the Court witnesses and this main dispute is whether the house exists or not in the suit scheduled property.

7. The learned trial Judge considered the submissions made by the learned counsel appearing on both side and allowed the application and passed the impugned order, appointing the Advocate Commissioner to find out whether in the suit scheduled property, namely, a house existed or not? Challenging the same, the present petition has been filed before this Court.

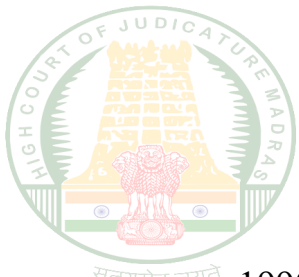
8. The learned counsel for the plaintiff submitted that the issue is only relating to the existence of building or not. The said facts are to be proved by the defendants through evidence. The appointment of the Advocate Commissioner after examination of Court witnesses amounts to collection of evidence and the same was erroneously entertained by the learned trial Judge as against the principle that the appointment of the Advocate Commissioner could not be appointed to collect the evidence. Hence, he seeks to set aside the impugned



9. The learned counsel for the respondent/legal heirs of the first defendant submitted that the application was allowed by the learned trial Judge in order to minimize the examination of witnesses and to ascertain the factual issue whether a house is existing and in the interest of justice by exercising the power under Section 151 of C.P.C., and also as per Order 26 Rule 9 of C.P.C. He also submitted that the Court has power to appoint the Advocate Commissioner at any time, in order to adjudicate the issue pending before the Court. Hence, he seeks for dismissal of this case.

10. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record and the impugned order passed by the learned trial Judge.

11. This Court looked into the suit scheduled property mentioned in the plaint. In the said plaint, there was no discrepancy about the existence of the house. Further, the house tax receipt obtained in the year 2010 was also produced. According to the petitioner, the settlement deed was obtained in the



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year 1990. According to the defendant in the suit, no house was constructed by anyone and it is a vacant site and he was in enjoyment of the property. He also took a plea that the house tax receipt itself is forged one. But without a house, the local authority would not have issued the house tax receipt. Even after producing the house tax receipt, the defendant raised dispute about the existence of the house. Hence, in order to find out the truth and also to minimise the evidence and to prove the particular fact, namely, existence of the house and the issue of forged receipt and also as the plaintiff filed the suit for declaration of title to the suit scheduled property, the appointment of Advocate Commissioner to resolve the dispute about the existence of the house is necessary and hence, the learned trial Judge has correctly considered the same as per the order 26 Rule 9 and Section 151 of C.P.C, and allowed the application. This Court finds no error in the said order of the learned trial Judge and finds no reason to interfere with by exercising superintendent power under Article 227 of Constituion of India.

12.The learned counsel for the petitioner relied the unreported judgment in C.R.P.(MD).No.60 of 2014. Considering the specific case and also the specific nature of that case, this Court dismissed that petition stating that the Advocate



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Commissioner cannot be appointed and petitioner had to establish the same through oral and documentary evidence. The facts of this case is totally different.

13. Accordingly, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

06.03.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

1. The Principal District Munsif cum-Judicial Magistrate,
Tiruchendur



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K.K.RAMAKRISHNAN, J.

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