



*C.R.P(MD)No.1176 of 2019*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2024

CORAM:

**THE HON'BLE MR.JUSTICE K.MURALI SHANKAR**

C.R.P.(MD)No.1176 of 2019

and

C.M.P.(MD)No.6451 of 2019

C.Muthu : Petitioner/Petitioner/Defendant

Vs.

A.L.Venkatachalam : Respondent/Respondent/Plaintiff

**Prayer :** This Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records of the fair and executable order in I.A.No.191 of 2018 in O.S.No.64 of 2017, dated 06.02.2019 on the file of the Principal District Munsif cum Judicial Magistrate Court, Karaikudi and set aside the same.

For Petitioner : Mr.A.Hajamohideen

For Respondent : Mr.S.Madhavan



*C.R.P(MD)No.1176 of 2019*

**ORDER**

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The Civil Revision Petition is directed against the order passed in I.A.No.191 of 2018 in O.S.No.64 of 2017, dated 06.02.2019 on the file of the Principal District Munsif cum Judicial Magistrate Court, Karaikudi, dismissing the petition filed under Order 26 Rule 9 C.P.C.

2. The respondent/plaintiff has filed the above suit claiming permanent injunction restraining the defendant and his men from in any manner interfering with his peaceful possession, by alleging that he has purchased the suit property and he is in continuous possession and enjoyment of the same. The defendant has filed a written statement alleging that the sale deed was executed for loan transaction and that the defendant has been in continuous possession and enjoyment of the suit property.

3. Pending suit, the defendant has filed an application for appointment of Advocate Commissioner to show the constructions, machineries and the tower available in the suit property and to file a report. The respondent/plaintiff has filed a counter statement raising



C.R.P(MD)No.1176 of 2019

serious objections. The learned District Munsif, after enquiry, dismissed the above application.

4. The learned counsel for the respondent would submit that though the petitioner has disputed the sale deed, he has not taken any steps so far challenging the same.

5. As rightly observed by the learned trial Judge, the petitioner/defendant through the commission appointment is attempting to show his possession. It is settled law that no commission can be appointed to show the possession of a party.

6. The learned counsel for the petitioner has relied on a decision of this Court in *Anwar Batcha and another Vs. S.Mahuedoom* reported in **2014 (5) CTC 85**, wherein the learned Judge has observed that a commission can be appointed to make a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits.



*C.R.P(MD)No.1176 of 2019*

WEB COPY

7. The above decision is applicable to the facts of the case on hand.

Considering the entire facts and circumstances of the case, the impugned order dismissing the petition cannot be found fault with. Hence, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

8. In the result, the Civil Revision petition is dismissed. Since the suit is pending from 2017, the learned trial Judge is directed to complete the trial and dispose of the suit within a period of four months from the date of receipt of copy of this order. Consequently connected Miscellaneous Petition is closed. No costs.

**13.02.2024**

NCC :yes/No  
Index :yes/No  
Internet :yes/No  
das



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*C.R.P(MD)No.1176 of 2019*

To

- 1.The Principal District Munsif cum  
Judicial Magistrate Court, Karaikudi.
- 2.The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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*C.R.P(MD)No.1176 of 2019*

**K.MURALI SHANKAR,J.**

DAS

Order made in  
C.R.P.(MD)No.1176 of 2019  
and  
C.M.P.(MD)No.6451 of 2019

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