



C.R.P.(NPD)(MD).No.2348 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.04.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(NPD)(MD).No.2348 of 2019

and

C.M.P.(MD).No.12398 of 2019

Gandhimathi ... Petitioner/Petitioner/Petitioner/1st Respondent/Defendant

vs

A.Mohan ... Respondent/Respondent Respondent/Petitioner/Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure as against the decree and fair order made in E.A.No.6 of 2019 in E.A.No.34 of 2018 in E.P.No.2 of 2017 in O.S.No.88 of 2013 on the file of District Munsif, Lalgudi, Trichy, dated 02.11.2019.

For Petitioner : Mr.R.Sundar

For Respondent : Mr.K.S.Vamsidhar

ORDER

The defendant in O.S.No.88 of 2013 on the file of District Munsif Court, Lalgudi, is the revision petitioner. The respondent herein as plaintiff had filed the above said suit for the relief of permanent injunction. An



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exparte decree came to be passed on 02.08.2013. Alleging that the decree for permanent injunction is being violated by the defendants, the plaintiff has filed E.P.No.2 of 2017 under Order 21 Rule 32 C.P.C. for civil arrest of the defendants.

2. Pending such an application, the defendant had filed E.A.No.34 of 2018 under Section 47 C.P.C. contending that the decree in E.A.No.34 of 2018 is inexecutable. Pending such an application, the defendant had filed E.A.No.6 of 2019 for appointment of Advocate Commissioner to note down the fact that shed put up by him is an old one.

3. According to the defendant, this will prove that the plaintiff was never in a possession, but only the defendant was in possession of the suit schedule property and therefore, there is no violation of the injunction decree. However, the trial Court has proceeded to dismiss the said application. Challenging the same, the present Civil Revision Petition has been filed.



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4. According to the learned counsel appearing for the revision petitioner, suppressing all the material fact, the plaintiff has managed to get an exparte decree. In fact, the defendants are in possession of the suit schedule property. Unless an Advocate Commissioner is appointed, he would not be able to establish the fact that the decree has been obtained by misrepresentation.

5. Per contra, the learned counsel appearing for the respondent would contend that the question of appointing an Advocate Commissioner for adjudicating an application under Section 47 on merits, does not arise.

6. This Court carefully considered the submissions made on either side and perused the materials available on record.

7. The narration of the above said events will clearly indicate that the defendant who had filed an application under Section 47 C.P.C. is seeking to appoint an Advocate Commissioner to note down the physical features of the property in order to establish the fact that there is an old shed in the suit schedule property.



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8. Therefore, it is clear that the defendant is attempting to collect evidence with the aid of the Court. That apart, only the legal issues relating to inexecutableity of the decree or the discharge of decree has to be adjudicated upon under Section 47 C.P.C. The question of appointing an Advocate Commissioner relating to factual dispute does not arise in considering an application under Section 47 C.P.C. Therefore, there are no merits in the revision petition.

9. Accordingly, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

23.04.2024

Internet:Yes/No
Index:Yes/No
RJR

To
The District Munsif, Lalgudi, Trichy.



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R.VIJAYAKUMAR, J.

RJR

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