



C.R.P.(PD)(MD).No.707 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD).No.707 of 2024
and CMP(MD).No.3719 of 2024

N.Jeethu

.... Petitioner/8th Respondent
/8th Defendant

-VS-

1.K.A.Bhoopalan

....1st Respondent/Petitioner
/Plaintiff

2.B.B.Premnath

B.B.Arunkumar (died)

3.T.L.Sabari Babu

4.B.A.Rani

5.B.A.Archana

6.B.A.Supriya

7.B.P.Kousalya

8.The Branch Manager

ICICI Bank

Having Office at 1st Floor

D.No.45, Hakkim Ajmalkhan Road

Chinna Chokkikulam

Madurai 625 002

....Respondents 2-8/Respondents 1, 3-7,9
/Defendants 1, 3-7, 9



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PRAYER: The Civil Revision Petition has been filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 12.12.2022 passed in I.A.No.258 of 2021 in O.S.No.145 of 2009 on the file of the V Additional District Judge, Madurai and allow the present civil revision petition.

For Petitioner : Mr.S.Poornachandran

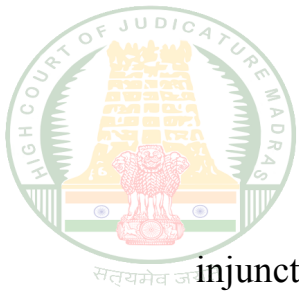
For Respondents : Mr.S.Chandrasekaran for R1

: No appearance for R2 to R8

ORDER

The 8th defendant in O.S.No.145 of 2009 on the file of the V Additional District Judge, Madurai has filed the above present civil revision petition challenging the allowing of an application for appointing the Advocate Commissioner to note down the physical features of the property with measurement and photographs and to find out the status of the machineries in the building.

2.A perusal of the records reveal that the first respondent herein as plaintiff has filed the above said suit for the relief of specific performance, permanent injunction restraining the defendants from alienating the suit properties to the third parties and for permanent



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injunction restraining the defendants and their men and agents from in any manner interfering with the peaceful possession and enjoyment of the suit property by the plaintiff.

3.According to the plaintiff, initially granted an order of interim injunction restraining the defendants from alienating the property. The present application has been filed by the plaintiff in I.A.No.258 of 2021 for appointment of Advocate Commissioner to note down the physical features of the property along with measurement. The said application has been allowed. Challenging the same, the present civil revision petition has been filed by the 8th defendant in the suit.

4.According to the revision petitioner, in a suit for specific performance with a consequential prayer for permanent injunction, appointment of Advocate Commissioner is not necessary. That apart, the Advocate Commissioner was appointed at the instance of the plaintiff at an earlier point of time. For the second time, he has filed the present application only to drag on the proceedings. Unnecessarily, the trial Court has proceeded to allow the said application.

5.Per contra, the learned counsel for the plaintiff/first respondent had contended that initially an order of interim injunction was granted as



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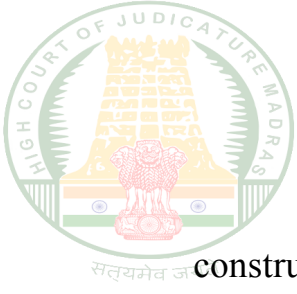
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against the defendants restraining them from alienating the property. The trial Court has also granted an order of injunction restraining the defendants from in any way interfering with the peaceful possession of the plaintiff. In violation of both the interim orders, the defendants 1 to 3 have alienated the property in favour of the 8th defendant and the 8th defendant has forcibly dispossessed the plaintiff from the suit schedule property. He had further pointed out that the 8th defendant has put up printing press in the said property and therefore, a Commissioner has to be appointed to note down the physical features of the property.

6. Heard both sides and perused the material records.

7. The prayer in the present suit is for specific performance and for consequential permanent injunction. Therefore, in such a suit, the question of appointment of Advocate Commissioner does not arise. In case, if the plaintiff has been affected by violation of interim injunction and the defendants have dispossessed the plaintiff or they have alienated the property, it is for plaintiff to file an appropriate application before the trial Court.

8. According to the learned Counsel for the first respondent/plaintiff, the property has been developed and now



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construction has come up pending suit. It is for the plaintiff to establish the same during trial.

9.In view of the above said deliberations, the order impugned in the revision petition is set aside. This civil revision petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

21.03.2025

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa

To

1.The V Additional District Judge
Madurai

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J

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