

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2015

CORAM:

THE HON'BLE MR. JUSTICE D.HARIPARANTHAMAN

C.R.P.No.3152 of 2015

and

M.P.No.1 of 2015

N.Vijayakumar

.. Petitioner/Defendant/Petitioner

Vs.

K.Subramanian

.. Respondent/Plaintiff/Respondent

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 13.04.2015 made in I.A.No.1837 of 2014 in O.S.No.344 of 2013 on the file of the District Munsif cum Judicial Magistrate Court, Sriperumbudur, Kancheepuram District.

For Petitioner : Mr.K.Muthamil Raja

O R D E R

The revision petitioner is the defendant in O.S.No.344 of 2013 on the file of the District Munsif cum Judicial Magistrate Court, Sriperumbudur.

2. The respondent herein as plaintiff has filed the suit in O.S.No.344 of 2013 for the following reliefs:

(a) for permanent injunction restraining the defendant from putting up obstructions on the 'A' scheduled road;

(b) for mandatory injunction directing the defendant to remove all the obstructions on the 'A' schedule road; and

(c) for permanent injunction restraining the defendant from interfering with the plaintiff's use and enjoyment of the 'B' scheduled property.

3. The revision petitioner/defendant has filed the written statement, wherein he has categorically stated that he did not put up any obstruction in 'A' scheduled property and that the plaintiff owns

Plot.No.83 and 83-A and the defendant owns Plot No.84. Further, in the written statement, the revision petitioner had also prayed for appointment of an Advocate Commissioner along with taluk surveyor to measure the suit property viz., Plot Nos.83, 83-A and 84.

4. According to the learned counsel for the revision petitioner, the respondent/plaintiff had filed an application in I.A.No.516 of 2014 in O.S.No.344 of 2013 for appointment of an Advocate Commissioner. Accordingly, an Advocate Commissioner was appointed and he submitted his report. The revision petitioner/defendant had also filed his objections to the report of the Advocate Commissioner and it has to be considered by the Trial Court.

5. While so, the revision petitioner/defendant has now filed an application in I.A.No.1837 of 2014 in O.S.No.344 of 2013 for appointment of an Advocate Commissioner. The said application was rejected by the Trial Court by an order dated 13.04.2015 stating that already a Commissioner was appointed and he had submitted his report. Aggrieved against the aforesaid order, the present Civil Revision Petition has been preferred.

6. I have heard the learned counsel appearing for the petitioner.

7. The learned counsel for the petitioner placed reliance on the decision of this Court reported in 2008 (3) CTC 602, A.Palaniappan v. K.Nallasamy and others and prayed for a direction to remit the warrant to the same Commissioner to file additional report.

8. It is not the case of the petitioner before the Trial Court to remit the warrant to the same Commissioner to file additional report, but he sought for appointment of a fresh Advocate Commissioner and it was rejected.

9. I do not find any infirmity in the said order passed by the Trial Court. However, this cannot preclude the petitioner from filing appropriate application seeking for remission of warrant to the same Commissioner to file additional report. When the petitioner files such application, the Trial Court is directed to consider the plea of the petitioner and decided the same on merits and in accordance with law, after hearing the plaintiff, in the light of the decision reported in 2008 (3) CTC 602, A.Palaniappan v. K.Nallasamy.

10. The Civil Revision Petition is disposed of in the above terms. Consequently, connected miscellaneous petition is closed. No costs.

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s/d-

Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

To

The District Munsif cum Judicial Magistrate Court,
Sriperumbudur.

+ 1 cc to Mr.K.Muthamil Raja, Advocate SR 40468

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