

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.11.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.3373 of 2015
and M.P.No.1 of 2015

M.K.Gunasekaran

.. Petitioner

Vs

P.Sivasankaran

.. Respondent

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 27.03.2015 made in I.A.No.165 of 2013 in O.S.No.55 of 2013 on the file of the District Munsif Court, Kotagiri.

For Petitioner : Dr.R.Gouri
For Respondent : Mr.K.F.Manavalan

ORDER

The Civil Revision Petition is filed against the order dated 27.03.2015 made in I.A.No.165 of 2013 in O.S.No.55 of 2013 on the file of the District Munsif Court, Kotagiri.

2.The respondent as a plaintiff filed a suit in O.S.No.55 of 2013 for the following reliefs:

“a. Granting a mandatory injunction, directing the defendant to demolish and remove the pillars erected within the Schedule “A” property;

b. Granting a mandatory injunction directing the defendant to close the open well sunk by him within the Schedule “B” property;

c. Directing the defendant to handover possession of the portions encroached by him within the Schedule “A” property, that is morefully described in Schedule “B”;

d. Declaring that easementary right of the plaintiff and those claiming through or under him, to the easementary rights of the air and light to the property described in Schedule “A”;

e. for a consequential mandatory injunction, directing the defendant to remove the construction, pillars and sunshade erected in the Schedule “C”, which hinders the flow of air and light to Schedule “A” property, within a time fixed by this Court and if he fails to do so to cause its removal;

f. for a permanent injunction restraining the Defendant, his men, servants, agents, relatives or any person claiming through or under him from in any manner interfering with the plaintiff’s peaceful enjoyment of the easementary rights of flow or air and light into the Schedule “A” property.”

At the time of filing the suit, the respondent/plaintiff filed an application in I.A.No.165 of 2013 for appointment of Advocate Commissioner. After hearing the objection raised by the petitioner/defendant, the said application was allowed and Advocate Commissioner was appointed. Against

which, the present Civil Revision Petition has been filed.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

4. Learned counsel for the petitioner submitted that the main grievance of the petitioner is that in the plaint itself in the description of the property, it is stated that 'A' Schedule property belong to the plaintiff, 'B' Schedule property belong to the respondent/plaintiff and encroached by the petitioner/defendant and 'C' Schedule property belong to the petitioner/defendant. He further submitted that since 'C' Schedule property belong to the petitioner/defendant, the appointment of Advocate Commissioner for inspection in respect of 'C' Schedule property has to be set aside. Hence, he prayed for setting aside the order passed by the Trial Court in I.A.No.165 of 2013.

5. Resisting the same, the learned counsel for the respondent submitted that it is true that the petitioner/defendant is the owner of the 'C' Schedule property and without any sanctioned plan, he had constructed three floors which obstruct the free flow of air and light to the respondent's property. Hence, inspection of property by the Advocate Commissioner is necessary for

deciding the matter. Therefore, the Trial Court has considered all the aspects perspective and came to the correct conclusion. Hence, he prayed for dismissal of the revision petition.

6.Considered the rival submissions made on both sides and perused the typed set of papers.

7.The only point to be decided is that whether the Advocate Commissioner may be permitted to inspect 'C' Schedule Property and file a report along with 'A' and 'B' Schedule Properties? It is true that 'C' Schedule Property absolutely belonging to the defendant. At this juncture, it is appropriate to refer prayer No.(e) of the plaint, in which it was stated that the defendant/petitioner herein has made construction and erected pillars and sunshade in 'C' Schedule Property which hinders the free flow of air and light to 'A' Schedule Property. So, it is appropriate to appoint an Advocate Commissioner to inspect whether the pillars and sunshade erected by the petitioner/defendant has obstructed the free flow of air and light to 'A' Schedule Property and the Advocate Commissioner is also directed not to enter the house of the petitioner/defendant and he has to inspect the outer area in 'C' Schedule Property and file a report. Hence, the Civil Revision Petition is liable to be dismissed.

8. Accordingly, the Civil Revision Petition is dismissed. However, the Advocate Commissioner is directed not to enter the house in 'C' Schedule Property and to inspect the outer area in 'C' Schedule Property. No costs. Consequently, connected Miscellaneous Petition is closed. No costs.

05.11.2015

Index: Yes/No
Internet: Yes/No
cse

To

The District Munsif Court, Kotagiri.

R.MALA. J.,

cse

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