



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

C.R.P. (PD) (MD) No.445 of 2015

and

M.P. (MD) No.1 of 2015

Paramasivam @ Chellaiah Thevar

...Petitioner/Respondent/
Defendant

-vs-

D.P.Jesukumar

...Respondent/Petitioner/
Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to call for the records in I.A.No.1100 of 2012 in O.S.No.251 of 2012, on the file of the Subordinate Court, Thoothukudi and set aside the order dated 29.11.2012 passed in it, and thereby dismiss the said IA.NO.1100/2012.

For Petitioner : Mr.C.Dhanaseelan
For Respondent : Mr.M.P.Senthil

O R D E R

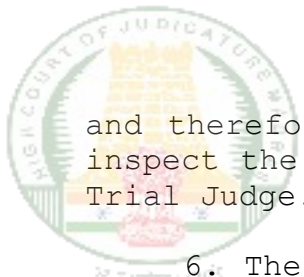
The respondent filed a suit in O.S.No.251 of 2012, before the learned Subordinate Judge, Thoothukudi, against the petitioner, praying for a decree of declaration and injunction. The petitioner entered appearance and contested the suit by filing written statement.

2. The respondent, during the currency of the suit, filed an interlocutory application in I.A.No.1100 of 2012, for appointment of Advocate Commissioner to inspect the suit property and to submit a comprehensive report. The petitioner failed to file counter affidavit opposing the prayer sought for by the respondent. The interlocutory application was allowed by the learned Trial Judge, by order dated 29.11.2012. Feeling aggrieved by the said order, dated 29.11.2012, the petitioner has preferred this civil revision petition.

3. Heard the learned counsel for the respective parties.

4. The learned counsel for the respondent has contended that the order in question was made as early as on 29.11.2012. However, the civil revision petition was filed only during March, 2015. According to the learned counsel, the petitioner attempted to stall the Advocate Commissioner's proceedings and thereafter filed this civil revision petition.

5. There is no dispute that the respondent filed a suit for declaration and injunction. It is the bounden duty of the respondent to prove that he is entitled to the suit property. The petitioner has taken up a clear position that he is not disputing the identity of the property



and therefore there is no necessity to appoint Advocate Commissioner to inspect the suit property. This aspect was not considered by the learned Trial Judge.

6. The learned counsel for the petitioner has taken up a contention that with regard to the delay in filing an interlocutory application to set aside the order, dated 29.11.2012. The petitioner filed an affidavit stating that the copy application bearing No.2924 of 2012 was preferred before the Trial Court for issuing certified copy of the order. The Trial Court failed to issue certified copy of the order and the same resulted in filing another application in I.A.No.64 of 2014. The respondent was, therefore, not correct in accusing the petitioner for filing the civil revision petition after considerable delay.

7. In view of the assertion made by the petitioner that he is not disputing the identity of the property, necessarily the order appointing Advocate Commissioner should be set aside.

8. In the result, the impugned order dated 29.11.2012, passed in I.A.No.1100 of 2012 in O.S.No.251 of 2012, by the learned Subordinate Judge, Thoothukudi, is set aside. The learned Trial Judge is directed to dispose of the suit as expeditiously as possible and in any case, within a period of nine months from the date of receipt of a copy of this Order. The parties are directed to co-operate for an early disposal of the suit.

9. In the upshot, I allow the civil revision petition. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To:

The Subordinate Judge,
Subordinate Court,
Thoothukudi.

Copy to: The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1CC to M/s.M.P.Senthil, Advocate in SR.17059

+1CC to M/s.C.Dhanasekaran, Advocate in SR.17132

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