

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

CRP.(PD).No.2548 of 2015
and M.P.No.1 of 2015

1.D.Vasuki

2.G.Kanagammal

... Petitioners

Vs.

K.Sarveswara Rao

... Respondent

Prayer:- Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 24.04.2015 passed by the Principal District Munsif Court, Poonamallee in I.A.No.505 of 2015 in I.A.No.375 of 2015 in O.S.No.469 of 2014.

For Petitioners : Mr.S.R.Shenbaga Babu
and Ms.Saraswathi Muthiah

For respondent : No appearance

O R D E R

Heard the learned counsel appearing for the petitioner. Challenging the impugned order passed in I.A.No.505 of 2015 in I.A.No.375 of 2015 in O.S.No.469 of 2014, dated 24.04.2015, allowing the application filed for appointment of Advocate

Commissioner, the present Civil Revision Petition is filed.

2. Even though the respondent has been served, no one represented the respondent.

3. The respondent/plaintiff filed suit for bare injunction stating that the defendants/petitioners attempted to trespass into the suit property and disturb his possession and enjoyment of the suit property. The plaintiff, subsequently, filed I.A.No.1335 of 2014 stating that the suit property being vacant site, the defendants are trying to encroach the suit property. During the pendency of the above I.A., and suit, the plaintiff again filed I.A.No.505 of 2015 for appointment of Advocate Commissioner to inspect the suit property and note down the physical features and to file report. Counter was also filed by the defendants. On 24.04.2015, the trial court allowed the application in I.A.No.505 of 2015, filed by the plaintiff. Against which, the present Civil Revision Petition has been filed.

4. The learned counsel appearing for the petitioners would submit that in the plaint, it was specifically mentioned that the suit property was vacant site and the relief sought for in the suit is for

bare injunction, however, in I.A.No.505 of 2015, appointment of Advocate Commissioner is sought for to note down the physical features of the suit property stating in paragraph 5 of the petition in I.A.No.505/2015 that compound wall is constructed around the suit property with iron gate and partitioned with brick wall with asbestos roof house having TNEB connection and on the other part of the suit property constructed with thatched house with well. She further submitted that the plaintiff/respondent is trying to collect evidence so as to prove the possession of the suit property by getting report from the Advocate Commissioner. Thus, the learned counsel prayed to set aside the order passed in I.A.No.505 of 2015 dated 24.04.2015.

5. I have considered the submissions of the learned counsel appearing for the petitioners and perused the typed set of papers filed in support of the petition.

6. As per the averments in the plaint, the respondent/plaintiff filed suit for bare injunction stating the suit property is originally belonged to one Gengappa Naicker who acquired the same through the Deed of Partition dated 22.09.1958; the said Gengappa Naicker

had executed a Will dated 25.03.1978 bequeathing the above property in Survey No.299/1 and other properties to his foster daughter D.Vasuki and his wife Kanagammal @ Kanagambarammal. After demise of the said Gengappa Naicker, the defendants took possession. The defendants have jointly executed a General Power of Attorney dated 24.09.1983 in favour of one P.Ayyappan to develop and promote the properties with powers of alienation and encumbrances. The said Ayyappan developed and converted the properties and created layouts; one among the site in Survey No.299/1A had been purchased by the plaintiff and took actual possession of the suit property and from the date of purchase of suit property, being a vacant site, he is in exclusive possession through registered sale deed and having title. It is the further averment in the plaint that with their henchmen, the defendants are trying to encroach the suit property and thus prayed for permanent injunction restraining the defendants claiming the enjoyment of the suit schedule property. During the pendency of the suit in O.S.No.469 of 2014, I.A.No.1335 of 2014 has been filed by the plaintiff seeking interim injunction and thereafter, filed I.A.No.505 of 2015 seeking appointment of Advocate Commissioner to note down the physical features of the suit properties and to submit a report.

In the counter filed by the petitioners/defendants in I.A.No.505 of 2015, it is stated that the Power Holder-Ayyappan, was not provided with any right to deal with the property and the nature of property was claimed as vacant land at the time of filing the suit, however, prayed for appointment of Advocate Commissioner to collect evidences as to the possession of the suit property. In the affidavit filed in support of the petition in I.A.No.375 of 2015, filed by the respondent/plaintiff, praying for injunction, it is stated as under:-

“It is further prayed that this Hon'ble Court may be pleased to order for an appointment of the advocate commissioner if it is deemed by this Hon'ble Court as necessary and thus render justice.”

7. On going through the entire pleadings in the plaint, interim injunction petition and I.A.No.505 of 2015, it is seen that to decide the issue whether the suit property is a vacant site or not, the appointment of Advocate Commissioner is necessary in order to note down the physical features of the suit property. Thus, the trial court has rightly considered the averments made in the petition and counter affidavit and ordered for appointment of Advocate

Commissioner before allowing the interim injunction application filed by the plaintiff. In such circumstances, I do not find any reason to interfere with the order passed in I.A.No.505 of 2015 in I.A.No.375 of 2015 in O.S.No.469 of 2014 dated 24.04.2015. Accordingly, this Civil Revision Petition is dismissed as devoid of merits with cost of Rs.1000/- payable to the Chief Minister's Relief Fund. Consequently, connected M.P., is closed.

07.01.2016

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To

The Principal District Munsif Court, Poonamallee.

R.MALA,J.

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