

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.3179 of 2015

and

M.P.No.1 of 2015

Gunasekaran
S/o.Govindaraj Gounder

... Petitioner

VS

1.Kasi
S/o.Narayanasamy

2.Chandiran
S/o.Muniya Gounder

3.Ravi
S/o.Natesan

4.Sundaramoorthi
S/o.Chinna Kulanthai

5.Elumalai
S/o.Ponnusamy

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of learned Additional District Munsif Court, Gingee, passed in I.A.No.1318 of 2014 in O.S.No.469 of 2006 on 11.09.2014.

For Petitioner : Mr.B.Jawahar
For Respondents : Mr.N.Elumalai

ORDER

This revision challenges the order of learned Additional District Munsif, Gingee, passed in I.A.No.1318 of 2014 in O.S.No.469 of 2006 on 11.09.2014.

2. The suit in O.S.No.469 of 2006 has been filed by petitioner/plaintiff seeking relief of declaration and consequential injunction. Respondents/defendants had moved I.A.No.301 of 2007 seeking appointment of an Advocate Commissioner to note down the physical features of the suit property. Such application was dismissed under orders dated 18.07.2007 on the reasoning that having failed to produce necessary documents to show continuous possession, the defendants had denied right of the plaintiff. Respondents/defendants filed C.R.P.No.2381 of 2007, which was dismissed by this Court under orders dated 31.03.2008. Subsequently, the suit has entered trial and P.W.1 has been examined. At this stage, respondents/defendants moved I.A.No.1318 of 2014 seeking appointment of an Advocate Commissioner towards measuring the suit property and to note down the physical features with the assistance of Revenue

officials and to file a report. Court below, under the impugned order, has allowed such application, against which, the present revision has been filed.

3. Heard learned counsel for petitioner and learned counsel for respondents.

4. Learned counsel for petitioner submitted that respondents/defendants earlier moved I.A.No.301 of 2007 in O.S.No.469 of 2006 seeking appointment of an Advocate Commissioner, which had been dismissed and the Civil Revision Petition challenging the same has also been dismissed. Respondents/defendants had moved another application in I.A.No.1318 of 2014 in O.S.No.469 of 2006 seeking appointment of Advocate Commissioner. The Court below has erred in allowing the said application. Learned counsel submitted that respondents/defendants cannot seek appointment of an Advocate Commissioner to disprove the case of petitioner/plaintiff. Learned counsel relied on the judgment of this Court *in M.A.Saravanan and others vs. Kannan and Others 2013(1) MWN (Civil) 878*, wherein it has been observed as follows:

“5.The suit is one for declaration, mandatory injunction and for permanent injunction. It is well settled that the plaintiff has to succeed based on his

pleadings and evidence let in by him in support of such pleadings. If there is any failure or lapse on the party of the plaintiffs, either in making the correct description of the property or for convincing the Court with material evidence in support of their claim, they would have to suffer for such failure. Therefore, it is for them to establish the case before the Court by adducing proper evidence. The petitioners herein as the defendants have sought for appointment of Commissioner only for noting down the physical features and also to furnish the topography of the land before the Court, which, in any considered view is not necessary.

6. In a suit for declaration and injunction of this nature, the defendants need not seek for the appointment of Commissioner to disprove the case of the plaintiffs. The trial Court had considered all these facts and circumstances and also found that the plaintiffs are bound to prove their case based on their pleadings, for which the defendants are not entitled to make out any application for appointment of Commissioner. I find no irregularity or illegality in the order passed by the Court below. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.”

5. Learned counsel for petitioner further submitted that in the course of enquiry in I.A.No.1318 of 2014, respondents/defendants had marked three

documents viz., (i) Ex.A1 - Memo issued by Tahsildar dated 27.09.2007, (ii) Ex.A2 - representation given by first respondent/first defendant to the Assistant Director, Land Survey Department, dated 18.08.2008 and (iii) Ex.A3 - letter issued by the District Collector to the Revenue Tahsildar, Villupuram dated 01.09.2008. Petitioner has produced Ex.B1 - Form D - assignment of property in his favour. Learned counsel contended that none of the documents produced by respondents/defendants supported their defence in the suit and respondents/defendants could not seek appointment of an Advocate Commissioner towards fulfilling their purpose. Learned counsel relied on the judgment of this Court in ***T.K.Krishnamurthy vs. Tamil Nadu Water and Drainage Board, rep.by its Senior Engineer RWS Division and Others [2006 (5) CTC 178]***. Referring to the observation of the Court below that it was necessary to ascertain the status of the property as in 1969, learned counsel submitted that the appointment of Advocate Commissioner would not serve such purpose. Learned counsel contended that the Advocate Commissioner had been appointed merely to gather evidence.

6. Learned counsel for respondents/defendants submitted that the respondents' case was of the suit property being Government land which had housed a water tank as also a pathway, both of which had been meant for

common use, use of which by public was being infringed upon by petitioner. Learned counsel submitted that though an earlier application for appointment of an Advocate Commissioner had been rejected, Court below, on perusal of the exhibits produced by respondents/defendants and also taking note of the position that Ex-B1 - Form D produced by the petitioner informed that petitioner/plaintiff shall not disturb areas meant for public use, had found it fit to appoint an Advocate Commissioner.

7. On consideration of rival submissions and perusal of the order under challenge, this Court finds that in allowing I.A.No.1318 of 2014, Court below has taken note of the position that an earlier interlocutory application for appointment of an Advocate Commissioner had been dismissed since the respondents/defendants had not produced any documentary proof, that such was not the position presently, that the petitioner/plaintiff had been examined as PW-1 and as many as 25 documents had been marked and while in the box, petitioner/plaintiff had informed that he had no objection to the appointment of an Advocate Commissioner. Finding the need to ascertain the lie of the land as in 1969 through revenue records towards resolving the dispute, Court below thought it appropriate to enlighten itself on the present lie of the land through appointment of an Advocate Commissioner. When the Court below has thought

it proper to adopt such a course, it is not for this Court to impose its views even if they are opposed to that of the Court below.

The Civil Revision Petition shall stand dismissed. No costs. Connected miscellaneous petition is closed.

11.08.2016

Index:yes/no
Internet:yes
kkd/gm

To

The Additional District Munsif,
Gingee.

C.T.SELVAM, J

kkd/gm

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