

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.09.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.R.P (PD) No.1254 of 2009 &
M.P.No.1 of 2009

Gurumurthy

... Petitioner

Vs.

1. The Tahsildhar,
Taluk Office,
Tindivanam.

2. The District Collector,
Villupuram District,
Villupuram.

... Respondents

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order of the Principal Subordinate Judge, Tindivanam dated 30.03.2009 and made in I.A.No.183 of 2008 in A.S.No.No.38 of 2007.

For Petitioner : Mr.N.Suresh

For Respondents: Ms.M.Jayashree
Government Advocate (CS)

ORDER

This memorandum of revision has been directed against the fair and decretal order dated 30.03.2009 and made in the application in I.A.No.183 of 2008 in the appeal in A.S.No.38 of 2007 on the file of the learned Subordinate Judge, Tindivanam.

2. The revision petitioner herein is the appellant in the appeal in A.S.No.38 of 2007 and plaintiff in O.S.No.448 of 2005 whereas the respondents are the respondents in the appeal and defendants in the suit.

3. It is revealed from the records that the revision petitioner seems to have filed the above suit as against the respondents seeking the relief of declaration to declare that the suit property is absolutely belonged to him and also for a mandatory injunction to direct the respondents to transfer the patta in his name. The suit was resisted by the respondents by filing their written statements. After formulating necessary issues, the parties were directed to face the trial proceedings. The learned trial Judge on appreciation of the evidences available on record had proceeded to dismiss the suit on 15.06.2007.

4. Challenging the order of dismissal, the revision petitioner has filed an appeal in A.S.No.38 of 2007 on the file of the Principal Subordinate Judge, Tindivanam. During the pendency of the appeal, the revision petitioner had taken out an application in I.A.No.183 of 2008 under Order XXVI Rule 9 of the Code of Civil Procedure to appoint an Advocate Commissioner to note down the physical features of the building so as to enable the Appellate Court to take a fair decision. That application was independently heard and ultimately dismissed by the Appellate Court saying that by seeking an appointment of the Advocate Commissioner, the revision petitioner wanted to

gather additional evidence to substantiate his case.

4. Mr.N.Suresh, learned counsel for the revision petitioner has submitted that any application filed during the pendency of the appeal ought not to have independently decided and it ought to have decided along with the appeal simultaneously. But the Appellate Court without considering or appreciating this proposition, had decided the application independently which resulted in erroneous dismissal of the said application. Therefore, he has urged that the impugned order might be set aside and the application in I.A.No.183 of 2008 be remitted back to the file of the first Appellate Court with a direction to dispose of the application along with appeal in A.S.No.38 of 2007 as expeditiously as possible.

5. Ms. Jayashree, learned Government Advocate (CS) has submitted that she does not have any objection to remit the application in I.A.No.183 of 2008 to the first Appellate Court with a direction to the first Appellate Judge to dispose the application along with appeal in A.S.No.38 of 2007.

6. In view of the above facts, this Court also finds that the impugned Order may be set aside and the application in I.A.No.183 of 2008 be remitted back to the file of first Appellate Court with a direction as sought for by the learned counsel for the petitioner.

7. Accordingly, the impugned order is set aside and the application in I.A.No.183 of 2008 is remitted back to the first Appellate Court with a direction to dispose of the application in I.A.No.183 of 2008 on merits along with the appeal in A.S.No.38 of 2007 within a prescribed period of two months from the date of receipt of a copy of this Order. With this direction, this revision petition is disposed of. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

28.09.2016

vrc

Index:yes/no

Internet:yes

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To

The Subordinate Judge,
Tindivanam.

T.MATHIVANAN.J.,

vrc

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