

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).No.907 of 2014
and M.P.No.1 of 2014

1.S.Saravana Pandian

2.Murugan

3.Vijay Balaji

... Petitioners

Vs.

1.S.Renuka

2.Kanaga Sabapathy Mudaliar

3.The Commissioner,
Corporation of Chennai, Chennai - 3.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 02.12.2013 passed in C.M.P.No.749 of 2013 in A.S.No.170 of 2012 on the file of the III Additional Judge, City Civil Court, Chennai.

For Petitioners : Mr.C.Umashankar

For Respondents : Mr.K.Chockalingam (R1 & R2)

ORDER

Challenging the fair and final order passed in C.M.P.No.749 of 2013 in A.S.No.170 of 2012 on the file of the III Additional Judge, City Civil Court, Chennai, the defendants 1 to 3 in O.S.No.309 of 2009 on the file of the 17 Assistant Judge, City Civil Court, Chennai have filed the above Civil Revision

Petition.

2.The respondents 1 & 2/plaintiffs filed the suit in O.S.No.309 of 2009 for declaration, mandatory injunction and for permanent injunction.

3.Before the trial Court, the plaintiffs filed an application in I.A.No.1141 of 2009 seeking for appointment of Advocate Commissioner to find out whether the defendants 1 to 3 have encroached the suit property on the Western side. The defendants 1 to 3 filed their counter and opposed the petition. After contest, the trial Court dismissed the application.

4.Subsequently, based on the oral and documentary evidences let in by the parties, the trial Court partly decreed the suit by granting a decree for mandatory injunction to demolish the excess balcony put up on the Eastern side of the 1st defendant's property, which is on the Western side of the plaintiffs' property and maintain the balcony as per Ex.A9.

5.Against the judgment and decree passed by the trial Court, the defendants 1 to 3 preferred an appeal in A.S.No.170 of 2012 on the file of the III Additional Judge, City Civil Court, Chennai. In the appeal, the defendants 1 to 3 filed an application in C.M.P.No.749 of 2013 seeking for

appointment of Advocate Commissioner to note down the physical features. The application filed by the defendants 1 to 3 was opposed by the plaintiffs. In the counter, the plaintiffs have stated that the filing of the application by the defendants 1 to 3 is only for the purpose of collecting fresh evidence, which cannot be permitted by the Lower Appellate Court. The Lower Appellate Court, taking into consideration the case of both parties, dismissed the application finding that there is no necessity for appointing an Advocate Commissioner.

6. Now, it is brought to the notice of this Court by the learned counsel for the respondents that the learned counsel on either side had made their submissions before the Lower Appellate Court and the Lower Appellate Court had posted the appeal for judgment on 30.11.2016.

7. On the earlier occasion when the application was filed by the plaintiffs seeking for appointment of Advocate Commissioner before the trial Court, the said application was stoutly opposed by the defendants 1 to 3 stating that the application is not maintainable and the Advocate Commissioner cannot find out whether the plaintiffs' property has been encroached or not.

8. When the parties had let in oral and documentary evidences before the trial Court, the same were also considered by the trial Court and a judgment was rendered in the suit. When the findings of the trial Court is under challenge before the Lower Appellate Court, the Lower Appellate Court can decide the appeal based on the available oral and documentary evidences.

9. It is settled position that a party cannot be allowed to collect evidence through Advocate Commissioner.

10. In the case on hand, when the parties had let in oral and documentary evidences with regard to the relief sought for in the suit, by appointing an Advocate Commissioner no useful purpose will be attained. Further, the Lower Appellate Court has held that appointment of an Advocate Commissioner is not necessary. When the Lower Appellate Court itself finds that there is no necessity for appointing an Advocate Commissioner to decide the issues raised in the suit, the Lower Appellate Court has rightly dismissed the application.

11. In these circumstances, I do not find any error or irregularity in the order passed by the Lower Appellate Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

18.11.2016

To

1. The III Additional Judge,
City Civil Court, Chennai.

M.DURAIWAMY,J.
va

C.R.P.(NPD).No.907 of 2014
and M.P.No.1 of 2014

18.11.2016