

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

CRP (PD) NO.4828 OF 2015
AND MP NO.1 OF 2015

S.Sathanandam

(Cause title accepted vide order of Court
dated 17.12.2015 made in M.P.No.1/2015
in CRP No.SR93145/2015)

... Petitioner

Versus

1.Jeevanandam S/o. C.Ranganathan

2.The Assistant Engineer
Administration and Maintenance
Tamil Nadu Electricity Board
Poombukar Nagar Division
Kolathur, Chennai – 600 099.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair order dated 10.09.2015 made in I.A.No.1483 of 2015 in O.S.No.4526 of 2012 on the file of the City Civil Court, Chennai.

For Petitioner : Mr.M.P.Mohandass
For Respondent-1 : Mr.S.William

ORDER

The petitioner filed a suit against the respondents in O.S.No.4526 of 2012, on the file of XVIII Assistant Judge, City Civil Court, Chennai, praying for a decree, directing the first respondent herein to quit and deliver vacant possession of the plaint B Schedule property and pay him damages for use and occupation. The suit was resisted by the first respondent on the ground that he is in adverse possession.

2. Before the Trial Court, the first respondent filed an application in I.A.No.1483 of 2015 for appointment of Advocate Commissioner to inspect the suit property and to report about its physical features. The learned Trial Judge allowed the said application notwithstanding the objections raised by the petitioner. The order dated 10.09.2015 in I.A.No.1483 of 2015 is under challenge in this Civil Revision Petition.

3. Heard the learned counsel for the petitioner and the learned counsel for the first respondent.

4. The suit in O.S.No.4526 of 2012 was instituted by the petitioner with a specific plea that he is entitled to an extent of 300 SFT, which was shown in the plaint as B Schedule property. According to the petitioner, the property is in his possession. In a suit for recovery of possession, it is for the plaintiff to plead and prove that he is entitled to a decree as prayed for. It is not as if the defendant is bound to prove the negative. The learned Trial Judge appears to have not considered the background facts before allowing the application. I am therefore of the view that the Civil Revision Petition deserves to be allowed.

5. In the result, the order dated 10.09.2015 in I.A.No.1483 of 2015 is set aside. The application in I.A.No.1483 of 2015 is dismissed.

6. In the upshot, I allow the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed.

15.11.2016

TK

K.K.SASIDHARAN, J.

TK

To

The XVIII Assistant Judge
City Civil Court
Chennai.

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