

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2016

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

CRP (PD) No.990 of 2015
and M.P.No.1 of 2015

S.Palani

... Petitioner

Versus

Vasumani

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 03.03.2014 passed in I.A.No.102 of 2013 in O.S.No.56 of 2013 on the file of the learned Principal District Munsif, Vandavasi, Thiruvannamalai.

For Petitioner : Mr.E.Sathiyaraj

For Respondent : Mr.B.Jawahar

ORDER

The petitioner filed a suit for declaration and injunction. The suit was contested by the respondent by filing written statement.

2. The petitioner filed an application before the Trial Court in I.A.No.102 of 2013 for appointment of an Advocate Commissioner to inspect the suit property and submit a report. The application was opposed by the respondent.

3. The learned Trial Judge considered the merits of the matter and dismissed the application. The said order is under challenge in the Civil

Revision Petition.

4. The learned counsel for the petitioner contended that while deciding the application in I.A.No.102 of 2013, the learned Trial Judge virtually dismissed the suit filed by the petitioner, by making sweeping observations against him. Since there was a dispute with regard to the measurement of the property in plaint A schedule, the petitioner sought appointment of an Advocate Commissioner. The trial Judge was therefore not correct in dismissing the application.

5. The learned counsel for the respondent while justifying the order submitted that the suit for declaration was made only in respect of A schedule property. The prayer for injunction was confined to plaint B Schedule. There was no prayer for declaration in respect of plaint B schedule. According to the learned counsel, the initiation of Interlocutory Application was only after the conclusion of trial and as such, the trial Court was correct in dismissing the application.

6. The petitioner filed the suit for declaration and injunction. It is not in dispute that the prayer for declaration is confined to plaint A schedule property. There was no plea for a decree of declaration in respect of plaint B Schedule property. Since the petitioner filed the suit for declaration and injunction, he cannot now say that the physical feature should be reported by

appointing an Advocate Commissioner. The trial Court was therefore correct in dismissing the application.

7. While dismissing the application, the trial Court considered the documents relied on by the petitioner and the respondent and indicated that even on merits, the petitioner has no case. While considering the application for appointment of Advocate Commissioner, the Trial Court was not expected to conduct a marathon trial and making observation on the merits of the suit. I am therefore of the view that the observation made in the order requires to be expunged. The trial Judge is directed to consider as to whether the appointment of Advocate Commissioner is necessary, after the conclusion of trial. This order would not stand in the way of the trial Court from making appointment of Advocate Commissioner, in case it is necessary later.

8. The observation made by the learned Trial Judge on merits shall stand expunged. The learned Judge is directed to decide the suit on merits.

9. The Civil Revision Petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

11.11.2016

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K.K.SASIDHARAN, J.

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To

The Principal District Munsif,
Vandavasi, Thiruvannamalai.

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