

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.11.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.R.P (PD) No.1522 of 2013

&

M.P.No.1 of 2013

1.Kamala
2.R.Magesh
3.M.Saravanan
4.M.Poovarasan

... Petitioners

Vs.

Gunasekaran

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order of the Principal District Judge at Dharmapuri dated 17.11.2012 in I.A.No.181 of 2012 in O.S.No.43 of 2011.

For Petitioners : Mr.P.Valliappan

For Respondent : Mr.S.C.Vishwanth

ORDER

This memorandum of civil revision has been directed against the fair and decretal order dated 17.11.2012 and made in I.A.No.181 of 2012 in

O.S.No.43 of 2011 on the file of the learned Principal District Court, Dhamapuri. The revision petitioners herein are the plaintiffs in the suit, whereas the respondent is the first defendant.

2. On perusal of the records this Court understands that the revision petitioners have filed the above said suit as against the respondent/first defendant as well as the remaining defendants seeking the following reliefs:

a) declaring the title of the plaintiffs to the suit property fully described in the schedule;

b) granting permanent injunction restraining the defendants and their men from in way interfering with the plaintiffs' peaceful possession and enjoyment of the suit property;

c) to declare that the decree dated 28.04.2011 obtained by the defendants collusively on the file of the Hon'ble Subordinate Judge, Dharmapuri in O.S.No.61 of 2011 as null and void and not binding on the plaintiffs;

d) granting permanent injunction restraining the defendants from in any way enforcing the said collusive preliminary decree dated 28.04.2011 in O.S.No.61 of 2011 on the file of the Subordinate Judge, Dharmapuri;

e) directing the defendants to pay a sum of Rs.1,75,000/- (Rupees one lakh seventy five thousands only) as compensation for the damages caused to the suit property with interest at the rate of 12% per annum;

3. Excepting the respondent herein, the remaining defendants have not contested the suit. At this stage, the respondent herein, who is the first defendant in the suit, had come forward with an application in I.A.No.181 of 2012 under Order XXVI Rule 9 of the Code of the Civil Procedure to appoint an Advocate Commissioner to note down the physical features of the suit property and to measure the same with the assistance of the Village Administrative Officer and also with the assistance of the town surveyor and to file a detailed report.

4. This petition was also contested by the revision petitioners. In their counter statement, the revision petitioners have contended that there is no dispute between the respondents/plaintiffs in respect of the suit property and hence jointly filed the suit and paid the proper court fee in respect of the relief sought for by them. It is also their contention that the title and possession of the immovable property are based upon the documentary evidences. The respondent, who is the first defendant, cannot seek commission for collection of evidence especially to prove the possession. Therefore, they have urged the trial Court to dismiss the petition.

5. After hearing both sides, the trial Court has proceeded to allow the petition on the following grounds:

"On perusal of 6 documents it is found necessary that the properties mentioned in those documents are to be specified. If

the properties are specified and the suit property is identified, then the real dispute between the parties will be made known. If the properties are identified it is useful to this court. Lengthy evidences will be reduced."

Only on this ground, the trial Court had proceeded to allow the application and also to appoint an Advocate Commissioner. Having been aggrieved by this order dated 17.11.2012, the revision petitioners, who are the plaintiffs in the suit, stand before this Court with this revision.

6. As aforestated in the opening paragraph of this order, the revision petitioners have filed the suit for declaration that the plaintiffs are having title over the suit schedule property and to declare that the decree dated 28.04.2011 obtained by the respondent/first defendant and other defendants collusively on the file of subordinate Judge, Dharmapuri in O.S.No.61 of 2011 as null and void and also for permanent injunction.

7. Apart from this, the revision petitioners have also sought the relief of a money decree directing the respondent/first defendant and other defendants to pay a sum of Rs.1,75,000/- as compensation for damages caused to the suit property with interest at the rate of 12% per annum. It is to be noted that the entire factual matrix hinges around the documentary evidence. As argued by Mr.P.Valliappan, learned counsel for the revision petitioners, there is no dispute between the plaintiffs in respect of the suit property. Hence, they have collectively and jointly filed the above suit for

collecting the evidence especially to prove possession for which an Advocate Commissioner need not be appointed.

8. In support of his contention, Mr.Valliappan, has placed reliance upon ***Thangaraj Vs. Pappathi*** reported in **2014 (2) CTC 68**, wherein a learned single Judge of this Court has observed that if the plaintiff is not confident about boundary line, he ought to have filed a suit for demarcation of boundary and not for bare injunction. Insofar as this petition is concerned, the respondent, who is the first defendant in the suit has specifically averred in his affidavit that in order to establish the physical feature of the property and to avoid oral evidence, the appointment of Advocate Commissioner is very much essential. But, only for the purpose of proving the physical feature of the property, this Court finds no Advocate Commissioner is necessary, because the entire suit is depending upon documentary evidences.

9. According to the revision petitioners/plaintiff, the decree was obtained by the first defendant along with other defendants collusively since the entire suit, as aforestated, is depending only on the documentary evidences and hence, the question of identification of property as well as the question of notifying the physical feature of the property does not arise. Therefore, the impugned order is not sustainable as it is seems to be erroneous in nature.

In view of the above facts, this civil revision petition is allowed. The impugned order dated 17.11.2012 is set aside and the petition in I.A.No.181 of 2012 is dismissed. It appears that the trial Court proceedings are in the initial stage. Therefore, the learned trial Judge is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order after formulating necessary issues. No costs. Consequently, the connected miscellaneous petition is closed.

04.11.2016

Index: yes/no
Internet: yes/no
gpa

To

The Principal District Judge
Dharmapuri

T.MATHIVANAN.J.,

gpa

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