

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

Civil Revision Petition (PD) No.1583 of 2012

R.Palanisamy

... Petitioner

vs

1. The Village Administrative Officer,
Maniathahalli Village,
Dharmapuri Taluk,
Dharmapuri District.

2. The Special Tahsildar,
Dharmapuri Taluk,
Dharmapuri District.

3. State of Tamil Nadu,
Rep. by the District Collector,
Dharmapuri.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and decretal order dated 12.10.2011 passed in I.A.No.883 of 2009 in O.S.No.223 of 2009 on the file of the District Munsif Court, Dharmapuri.

For Petitioner : Mr.P.Valliappan

For Respondents : No appearance

ORDER

Challenging the correctness of the order dated 12.10.2011 and made in I.A.No.883 of 2009 in the suit in O.S.No.223 of 2009 on the file of the District Munsif Court, Dharmapuri, this Civil Revision Petition is filed by the plaintiff in the suit.

2. Even though notice has been served on the respondents, they have not chosen to appear before this Court either in person or through their counsel.

3. Heard Mr.P.Valliappan, learned counsel for the petitioner and perused the grounds of the revision along with the impugned Order. Having taken in to consideration of the relevant facts and circumstances, this Court is of the view that this revision petition itself can be disposed of on merits in the absence of the respondents.

4. It is obvious to note that the revision petitioner has filed the above suit as against the respondents seeking the relief of permanent injunction to restrain the respondents/defendants and their men from in any way interfering

with his peaceful possession and enjoyment of the properties which are more fully described in the plaint schedule. Suit seems to have been filed as early as on 23.9.2009. Along with the suit, the revision petitioner has also filed an application in I.A.No.883 of 2009 under Order 26 Rule 9 Code of the Civil Procedure seeking the relief of appointment of Advocate Commissioner to note down the physical features of the suit property.

5. While advancing his arguments, Mr.P.Valliappan, learned counsel for the petitioner has invited attention of this Court to para 5 of the plaint wherein the plaintiff has stated that the suit properties are still in his possession and enjoyment in which he has planted mango groves and the mango trees are well developed in the suit land. Mr.P.Valliappan has also invited the attention of this Court to para 3 of the said affidavit, in which the plaintiff has stated that since the date of purchase, the plaintiff has been in possession and cultivating the suit properties and all the revenue records like patta, chitta, adangal and kist assessment for the properties have been changed in his name and he has also dug a well in the suit property and obtained service connection for the installation of pump set in the well. The learned trial Court has proceeded to reject the petition saying that the petitioner has to substantiate

his case by way of gathering evidence in the suit properties.

6. But the provision of Order 26 Rule 9 itself is very clear that in any suit in which a Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make investigation and to report thereon to the Court. It has to be noted that only for the purpose of elucidating the matter, which is in dispute, the commission is very much essential so as to enable the court to take a fair decision. The learned trial Court without approaching the real issue with proper perspective, has proceeded to reject the petition erroneously at the initial stage itself and therefore the revision petition deserves to be allowed.

7. Accordingly, this Civil Revision Petition is allowed and the impugned Order dated 12.10.2011 is set aside and the petition in I.A.No.883 of 2009 is allowed. The learned trial Judge is directed appoint an advocate commissioner from the panel of lawyers being maintained in his Court directing him to visit

the suit property and to note down the physical features and file a detailed report along with a plan to that effect within the prescribed time as may be fixed by him for the better disposal of the suit. However, there shall be no order as to cost.

20.09.2016

Index:yes/no

Internet:yes

vrc

To

The District Munsif,
Dharmapuri.

T.MATHIVANAN, J.,

vrc

C.R.P.(PD) No.1583 of 2012

20.09.2016