

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2016

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.R.P.No.2137 of 2013

P.Venkatesan

...Petitioner/Plaintiff/Petitioner

Versus

1.N.Srinivasan
2.S.Venugopal
3.S.Krishnamurthy
4.A.Muralikrishnan
5.A.Sridhar
6.Sujatha
7.Santha
8.M.Karikalan
9.P.Jai Anad
10.S.Padma Sri
11.V.Srinivasan
12.N.Aruna

...Respondents/Defendants/Respondents

(The respondents 1 and 4 to 12 have remained
exparte before the Trial Court and hence notice
to them may be dispensed with.)

This civil revision petition against the fair and decreetal
order dated 13.02.2013 made in I.A.No.307 of 2012 in O.S.No.78
of 2011 on the file of the Principal District Judge,
Krishnagiri.

For Petitioner : Mr.D.Shivakumaran

For Respondents : Mrs.V.Srimathi
for V.Raghavachari for RR 2 & 3
Respondents 1 and 4 to 12
- Given up

ORDER

The unsuccessful petitioner before the lower court is before
this court to challenge the dismissal order passed on the
application taken out by him for appointment of an advocate
commissioner to visit and make inspection of the suit property

to note down the physical features and locate the suit item Nos. 1 to 3 lands with reference to the boundaries as mentioned in the plaint, to find out whether they are vacant or whether there are any superstructures or any buildings therein and also to locate the suit item No.4, house property, and find out its present condition and position.

2. Heard Mr.D.Shivakumaran, learned counsel appearing for the petitioner and Mrs.V.Srimathi, learned counsel appearing for the respondents 2 and 3.

3. The suit has been filed by the petitioner herein for declaration of title of the suit property and for permanent injunction restraining the respondents from interfering with the petitioner's peaceful possession and enjoyment of the suit properties. The respondents/defendants 2 and 3 filed written statement and issues were framed and thereafter, the trial commenced.

4. The petitioner herein was examined as PW1 and his evidence was over. At that stage, the petitioner herein filed the above application. The Trial Court dismissed the said application holding that boundaries of the suit has been categorically stated in the plaint itself and therefore, the appointment of advocate commissioner to make local inspection is unnecessary and it would amount to collecting of evidence on behalf of the petitioner. The said finding reached by the Trial Court cannot be interfered with as it is well settled position of law.

4. In fact a perusal of the plaint would disclose that the petitioner herein categorically furnished four items of the properties and their boundaries have been more fully described in the description of properties. In fact, PW1 has confirmed his pleadings in the plaint through his evidence. When such is the position, there is no necessity for appointment of advocate commissioner, that too after commencing the trial.

5. It is the plaintiff to approach the Court with the documents positively and he cannot seeks appointment of advocate commissioner to collect evidence. This position of law is declared by this Court: in Rangasamy vs. The Superintending Engineer, TNEB, Mettur Electricity System, Mettur Dam, Salem District and others reported in 2006-5-CTC 501. However, the law has to be invoked according to the fact. Merely because there is no prejudice on the side of the respondents, it is not an automatic that an advocate commissioner should be appointed.

6. No doubt, the Trial Court is the fact finding Court and it does not mean that for each and every point, the Advocate Commissioner can be appointed. In this case, the petitioner is with very categorical in the pleadings and in the evidence of PW1. Therefore, there is no necessity for the appointment of Advocate Commissioner to ascertain the boundaries and the nature of the properties, which would amount to collecting of evidence on behalf of the petitioner.

7. The Trial court posted the matter for trial. If any application was filed before the Trial, it would have decided very liberally, whereas, in this case to summon PW1, the application has been filed. Filing of application after the commencement of Trial and after the evidence is over, is nothing but to prolong the matter to see that the trial is not over and the suit is not disposed of.

8. The Trial Court should be careful enough to deal with the matter based on the averments. Accordingly the Trial Court rightly dismissed the application. Therefore, the revision fails and the same is dismissed. No costs. Consequently the connected M.P.No.1 of 2013 is closed. Since the suit is of the year 2011, PW1 evidence was over and the matter is pending for more than five years, it is appropriate to direct the Trial Court to conclude the trial and dispose of the suit on or before 30.9.2016. Both the parties are directed to cooperate with the Trial Court without taking out any unnecessary application.

Sd/-

Assistant Registrar(CS V)

//True Copy//

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To

The Principal District Judge,
Krishnagiri.

+lcc to Mr.V.Raghavachari, Advocate, S.R.No.20633
+lcc to Mr.D.Shivakumaran, Advocate, S.R.No.20831

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AD(CO)
CA(03/08/2016)