

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **30.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.3303 of 2016

M.Nagaraj : Petitioner

versus

G.Dhanasekar : Respondent

PRAYER: Revision filed against the order dated 10.2.2016, in I.A.No.1364 of 2015 in O.S.No.416 of 2013, on the file of the Additional District Munsif Court, Poonamallee.

For petitioner :: Mr.C.Prabakaran

For respondents :: Mr.D.Senthil Kumar

ORDER

The petitioner filed an application in I.A.No.1364 of 2015 before the learned Additional District Munsif, Poonamalle, to remit the warrant back to the Advocate Commissioner for the purpose of fresh inspection and to report about the present position of the thatched hut and the physical features of the property.

2. The learned District Munsif dismissed the application with an observation that it is a matter for evidence and there is no requirement to remit the warrant to the Advocate Commissioner. The order is under challenge in this civil revision petition.

3. The learned counsel for the petitioner contended that after the inspection conducted by the Advocate Commissioner, the respondent and his men trespassed into the property and demolished the hut. According to the learned counsel, it was only to report about the subsequent events, the petitioner filed the application in I.A.No.1364 of 2015. The Trial Court without ascertaining the nature of the application, rejected the prayer for remitting the warrant to the Advocate Commissioner.

4. The learned counsel for the respondent while justifying the order passed by the learned Additional District Munsif, contended that the petitioner is making an attempt to create documents to appear as if he is in possession of the property. According to the learned counsel, the petitioner wanted the Advocate Commissioner to report that he is in possession of the property. Possession being one to be established on the basis of evidence, there is no question of issuing a commission to ascertain the same.

5. The petitioner earlier filed an application in I.A.No.124 of 2015 for appointment of Advocate Commissioner. The Trial Court appointed an Advocate Commissioner. Pursuant to the said order, the Advocate Commissioner visited the property and noted down the physical features.

6. The petitioner filed an application in I.A.No.1364 of 2015 with a

contention that subsequent to the inspection by the Advocate Commissioner, respondent and his men trespassed into the property and committed mischief.

7. The report filed by the Advocate Commissioner originally contained the physical features of the property. The counter affidavit filed by the respondent shows that there is a mention in the report submitted by the Advocate Commissioner that there is a brick built wall in the suit property. Since there is such a reference in the report submitted by the Advocate Commissioner no purpose would be served by remitting warrant to the Advocate Commissioner for the purpose of submitting a report whether the hut is still there in the property. The petitioner took up a contention that he is in possession of the property. The respondent on the other hand contended that brick built hut was constructed only by him. Therefore, there is an issue as to who is in possession of the property. Such an issue regarding possession cannot be decided by deputing Advocate Commissioner. It is for the parties to produce materials before the Trial Court to substantiate their respective contentions.

8. The learned Trial Judge was correct in dismissing the application, taking into account the report filed by the Advocate Commissioner earlier. I do not find any error or illegality in the said order warranting interference by

K.K.SASIDHARAN, J.

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exercising revisional jurisdiction under Article 227 of the Constitution of India. However, I make it clear that neither the order passed by the Trial Court dated 10 February 2016 in I.A.No.1364 of 2015 nor the order in this civil revision petition would stand in the way of the petitioner from producing materials to substantiate his contention.

9. The civil revision petition is dismissed with the above observation.
No costs. Consequently, C.M.P.No.16852 of 2016 is also dismissed.

30.11.2016

Index:Yes/no
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To
The Additional District Munsif Court, Poonamallee.

C.R.P.(P.D.) No.3303 of 2016

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