

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2016

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.6 of 2016

and

M.P.No.1 of 2016

Sivalingam

.. Petitioner

Vs

1.Bagyam

2.Gopal

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 17.06.2015 made in I.A.No.202 of 2015 in O.S.No.446 of 2010 on the file of the Principal District Munsif Court, Cuddalore.

For Petitioner : Mr.T.Sezhian

ORDER

The Civil Revision Petition is filed against the order dated 17.06.2015 made in I.A.No.202 of 2015 in O.S.No.446 of 2010 on the file of the Principal District Munsif Court, Cuddalore.

2.The petitioner as a plaintiff filed a suit for injunction or alternative decree for recovery of possession of the suit property stating that his father Thandavaraya Padayachi has purchased the property under the sale deed dated 23.06.1945. During his lifetime, he filed a suit in O.S.No.112 of 1991 against one Dhandapani Padayachi who attempted to interfere in his peaceful possession. The suit was decreed in favour of the plaintiff's father. After the death of Dhandapani Padayachi, his daughter-in-law, the first respondent herein attempted to interfered the possession of the plaintiff and hence, he filed a suit for injunction or alternative decree of recovery of possession. During the pendency of the suit, the respondents/defendants encroached upon some portion of the suit property. Hence, the petitioner filed an application for appointment of Advocate Commissioner to inspect the property and measure the property with the help of the surveyor and ascertain the area of encroachment and file a report. After considering the defence raised by the respondents/defendants, the Trial Court has dismissed the application. Against which, the present Civil Revision Petition has been preferred.

3.At the time of admission, argument of the learned counsel for the petitioner is heard in length.

4.Learned counsel for the petitioner submitted that the petitioner filed a suit for bare injunction. During the pendency of the suit, the respondents/defendants encroached upon some portion of the property and hence, he filed an application for appointment of Advocate Commissioner to ascertain as to what extent of property has been encroached upon by the respondents/defendants. That factum was not considered by the Trial Court. Hence, he prayed for setting aside the impugned order passed by the Trial Court.

5.Considered the submission made by the learned counsel for the petitioner and also perused the typed set of papers.

6.The petitioner as a plaintiff filed a suit for permanent injunction stating that his father has purchased the property under the sale deed dated 23.06.1945. Since one Dhandapani Padayachi has attempted to interfere the peaceful possession of the plaintiff's father and the plaintiff's father has filed a suit in O.S.No.112 of 1991 on the file of the District Munsif Court, Cuddalore where he obtained an order of injunction. After the death of Dhandapani Padayachi, the defendants who are none other than the daughter-in-law and son-in-law attempted to interfere the peaceful possession of the plaintiff.

Hence, he was forced to file a suit for permanent injunction. According to the learned counsel for the petitioner, during the pendency of the suit, the respondents have encroached upon some portion of the suit property and put up construction. Hence, he was forced to file an application for amendment of the plaint for alternative prayer for recovery of possession to ascertain as to what extent of portion has been encroached upon by the defendants and hence, appointment of Advocate Commissioner is necessary. It is appropriate to consider the prayer sought for in the plaint. It is not the case of the plaintiff that the defendants have encroached upon the property during the pendency of the suit. The plaintiff filed the suit for permanent injunction or alternatively grant the decree for recovery of possession. In such circumstances, he cannot collect material evidence by way appointing an Advocate Commissioner. Furthermore, it is pertinent to note that in the prayer itself he has stated that Commissioner has to inspect the property and measure the property with the help of the surveyor on the basis of the sale deed dated 23.06.1945. At this juncture, It is appropriate to incorporate the prayer sought for in I.A.No.202 of 2015, which is as follows:

“..... to inspect the suit property and measure the same on the basis of petitioner's side sale deed dated 23.06.1945 with the help of Sub Inspector of Survey and ascertain the area of encroachment and file his report with plan.”

7.The above said prayer sought for by the petitioner shows that he want to collect material that too, to prove his possession by way of appointment of Advocate Commissioner. That factum was rightly considered by the Trial Court. Hence, I do not find any reason to interfere with the order passed by the Trial Court. Consequently, the Civil Revision Petition deserves to be dismissed as devoid of merits.

8.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.01.2016

Index: Yes/No
Internet: Yes/No
cse

To

The Principal District Munsif, Cuddalore.

R.MALA. J.,

cse

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