

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.751 of 2016

&

C.M.P.No.4142 of 2016

V.P.Muthaiyyan

... Petitioner

VS.

1.V.Shanmugasundaram

2.P.Ravi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 05.12.2015 in I.A.No.601 of 2015 in O.S.No.155 of 2014 on the file of District Munsif Court, Mettur.

For Petitioner : Mr.R.Subramanian

ORDER

The plaintiff in the original suit O.S.No.155 of 2014 pending on the file of the District Munsif, Mettur is the petitioner in the Civil Revision Petition.

2. The petitioner filed the above said suit against the respondents herein for a permanent injunction not to disturb his alleged possession and enjoyment of the suit properties on the basis of his claim that he is a lessee under the respondents in respect of the suit property. Further contention of the petitioner is that the lease was created in 1976 during the life time of his father and his father planted 200 coconut trees and that after the death of the father of the petitioner, the petitioner got the same by virtue of a partition in his family in 1996 and that thereafter, he planted 100 more coconut trees and was paying a sum of Rs.1000/- per month as rent as against Rs.500/- per month paid by his father.

3. The respondents flatly denied the petitioner's case that the suit property had been leased out to his father and after his father, the petitioner became lessee under the respondents. It is their further contention that besides the coconut trees, which are found in the suit properties, mango trees were also planted by the grandfather of the petitioner and at no point of time, either the grandfather of the respondents or respondents leased out the said property to anybody including the petitioner herein. The respondents have not denied the existence of coconut trees in the suit properties. On the other hand, what they contend is that the trees were planted not by the father of the petitioner or by the petitioner as claimed by him, but by the grandfather

of the respondents. In an attempt to show that the petitioner is in possession, the petitioner has also made an averment to the effect that he is irrigating the land to feed the coconut trees with water lifted from the common well situated in another property owned by the petitioner and his pangalis. On that premise, the petitioner wanted an appointment of an Advocate Commissioner to note the existence of the coconut trees and also channels meant for irrigating the coconut thope from the common well from another Survey Number belonging to him and others.

4. The respondents have resisted the claim stating that the attempt made by the petitioner is to prove the alleged possession and enjoyment of the plaintiff which cannot be done by appointing a Commissioner and that on the other hand, the petitioner has to lead evidence in prove of the lease, payment of lease amount and the enjoyment of the property as a lessee. In short, the contention of the respondents before the trial Court was that no Commissioner could be appointed to find out who was in possession and enjoyment of the suit property.

5. It must be noted that the respondents have not denied the existence of coconut trees and on the other hand, they pleaded that the coconut trees were planted by their grandfather. The plea made by the respondents that there are mango trees planted by the grandfather of the

respondents has not been denied by the petitioner and the petitioner has not chosen to make any plea to the effect that it was the father of the petitioner or the petitioner, who planted the mango trees also.

6. Under such circumstances, the Court below rightly held that the petition seeking appointment of a Commissioner could not be allowed. This Court does not find any defect or infirmity, much less wrong exercise of jurisdiction by the trial Court in dismissing the interlocutory application. There is no valid ground for interfering with the same in exercise of the power of superintendence of this Court under Article 227 of the Constitution of India. The revision deserves dismissal at the threshold.

Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

08.03.2016

Index: Yes/No
Internet: yes
gpa

To

The District Munsif Court
Mettur

P.R.SHIVAKUMAR.J.,

gpa

C.R.P (PD) No.751 of 2016 &
C.M.P.No.4142 of 2016

08.03.2016