

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2016

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 3081 of 2012
and
M.P. No.1 of 2012

Malar

.. Petitioner

Vs

1. Egavalli

2. Perumal

.. Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 29.04.2011 in I.A. No. 318 of 2010 in O.S. No.65 of 2010 on the file of District Munsif cum Judicial Magistrate No.I, Walajapet, Vellore District.

For Petitioner : Mr. S. Vadivel Murugan

For Respondents : Mr. K. Mohana Murali

ORDER

This revision petition arises against the order dated 29.04.2011 passed in I.A. No. 318 of 2010 in O.S. No.65 of 2010 by the District Munsif cum Judicial Magistrate No.I, Walajapet, Vellore District.

2. Learned counsel for the Revision petitioner would submit that the petitioner filed a suit in O.S. No. 65 of 2010 on the file of the District Munsif cum Judicial Magistrate, Walajapet, against the respondents herein, praying for the relief of declaration, mandatory injunction and permanent injunction, in respect of the 'B schedule' property. According to the learned counsel for the petitioner, the petitioner is the absolute owner of the 'A schedule' property on the basis of the patta granted by the Government. While constructing her building, the petitioner left 2 ft. gap on the eastern side of the property, for draining of rain water. Taking advantage of the situation that the petitioner was not in station, the respondents herein, encroaching the said 2 ft. area and have put up their construction. Since the said fact was disputed by the respondents herein, in their written statement, the revision petitioner filed an Interlocutory Application in I.A. No.318 of 2010 in O.S. No. 65 of 2010 seeking for appointment of an Advocate Commissioner, to inspect the 'B schedule' property and note down its physical features with the help of the Taluk Surveyor, Walaja Taluk, Vellore District and direct the Commissioner to file his report before the Court. But, the Trial Court has dismissed the I.A. No.318 of 2010 in O.S. No. 65 of 2010. Aggrieved by the order of dismissal, this revision petition has been filed.

3. Mr. Mohana Murali, learned counsel for the respondents would submit that on the very same day, patta was granted to the respondents herein also. In the counter affidavit filed before the Lower Court, the respondents herein have categorically denied the allegation of encroachment in the suit property. He further contended that the Trial Court has rightly observed that the revision petitioner has not sought for any remedy or relief for measuring the suit property as well as the properties adjacent to the suit properties, with the help of a qualified surveyor. Therefore, the Application filed by the Revision Petitioner seeking for appointment of an Advocate Commissioner is not maintainable and hence the trial Court has rightly rejected the application.

4. Heard Mr. Vadivel Murugan, learned counsel for the petitioner and Mr. Mohana Murali, learned counsel for the respondents and perused the material available on records.

5. The petitioner has filed a suit in O.S. No. 65 of 2010 before the District Munsif cum Judicial Magistrate, Walajapet, praying for declaration, mandatory injunction and permanent injunction, in

respect of the 'B schedule' property. The defendants/ respondents have filed a written statement refuting the allegations of the plaintiff/ petitioner, stating that they were living in a hut for several decades in the schedule property and then they constructed a house within their measurements and that the defendants have not encroached the suit property. Learned counsel for the defendants/ respondents further submitted that due to enmity the present suit has been filed against them by the plaintiff/ petitioner. The revision petitioner has filed the Interlocutory Application in I.A. No. 318 of 2010 in O.S. No. 65 of 2010 praying for appointment of an Advocate Commissioner to inspect the 'B schedule' property and to note down its physical features with the help of the Taluk Surveyor and to file his report. On perusal of the order passed by the Trial Court, it is found that the reasons stated therein is unsustainable in law. The Trial Court has misunderstood the prayer in the Application and has rejected the same, holding that the suit property must be measured with the help of a qualified surveyor and therefore in the absence of any such prayer in the Application, the present relief of appointing an Advocate Commissioner, cannot be granted to the plaintiff/ petitioner. The prayer in the Interlocutory Application is to appoint an Advocate Commissioner to inspect the 'B schedule' property and note down its physical features with the help of

a Taluk Surveyor, Walaja Taluk, Vellore District and to direct the Commissioner to file his report before the Court. Therefore, dismissal of the Interlocutory Application of the revision petitioner, on the ground that the petitioner has not sought for a qualified Surveyor to measure the suit properties, is not correct.

6. Whiles, the reasoning given in the order of the Trial Court is not correct and hence the order dated 29.04.2011 passed by the District Munsif cum Judicial Magistrate No.I, Walajapet, Vellore District, in I.A. No. 318 of 2010 in O.S. No.65 of 2010 is set aside. Further, the Trial Court is directed to appoint an Advocate Commissioner to inspect the 'B' schedule property in the presence of both the parties, after giving due notice to them.

7. In the result, the Civil Revision Petition is allowed and the Trial Court is directed to proceed accordingly, as expeditiously as possible. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

03.06.2016

Index: Yes/No
avr

D. KRISHNAKUMAR J.,

avr

To

The District Munsif cum
Judicial Magistrate No.I,
Walajapet, Vellore District

CRP (PD) No. 3081 of 2012
and
M.P. No.1 of 2012

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