



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(MD)No.2733 of 2015

and

M.P(MD)No.1 of 2015

1.R.Natarajan

2.N.Sudhakar

:Petitioners/Petitioners/Defendants

Vs.

N.Paripooranam

:Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decreetal order made in I.A.No.485 of 2015 in O.S.No.135 of 2015, dated 11.09.2015 on the file of the District Munsif Court, Thiruvaiyaru.

For Petitioner

: Mr.R.Murali

ORDER

The revision petitioners have filed this Civil Revision Petition against the order passed in I.A.No.485 of 2015 in O.S.No.135 of 2015, dated 11.09.2015 on the file of the District Munsif Court, Thiruvaiyaru.

2.The brief facts of the case is as follows:

The respondent herein filed a suit in O.S.No.135 of 2015 before the District Munsif Court, Thiruvaiyaru, praying for permanent injunction against the revision petitioners/defendants. In the aforesaid suit, the revision petitioners have filed a written statement before the Court below and they have also filed an application in I.A.No.485 of 2015, for appointment of Advocate Commissioner to measure the suit properties and to file a detailed report with regard to the physical features of the same.

3. According to the petitioners, the suit properties are vacant punja properties and the same were ancestral properties and the same were divided among the family members by way of oral partition. But, the respondent filed the aforesaid suit as if she is the absolute owner of the property. It is further stated that the factum of oral partition and separate possession and enjoyment can be proved only at the time of trial by let in oral evidence. But, at this stage, since the petitioners are not in a position to produce the desired evidence, in order to elucidate the matter in dispute, the present application was filed to appoint an Advocate Commissioner to make inspection of the suit property and to file a detailed report regarding the physical features of the same.



But, the trial Court dismissed the said application on 11.09.2015. Therefore, the revision petitioners have filed this Civil Revision Petition before this Court.

4. The learned counsel for the petitioners submitted that the trial Court has not appreciated the submission made by the petitioners and erroneously dismissed the application. It is further submitted that the trial Court has not given any reason for not accepting the plea of the petitioners necessitating the filing of the present application and hence, the impugned order passed by the trial Court is liable to be set aside.

5. Heard the learned counsel appearing for the petitioners and perused the materials placed on record.

6. It is an admitted fact that the respondent filed a suit in O.S.No.135 of 2015 for permanent injunction against the revision petitioners/defendants. In the aforesaid suit, the petitioners filed an application in I.A.No.485 of 2015 to appoint an Advocate Commissioner to make inspection of the suit property and to file a detailed report regarding the physical features of the same, stating that there is no document available to show the separate possession and further, the factum of oral partition and separate possession and enjoyment can be proved only at the time of trial by let in oral evidence and since they were not in a position to produce the desired evidence, in order to elucidate the matter in dispute, the present application was filed.

7. This Court is of the view that the petitioners being defendants in the suit filed the present application for appointment of Advocate Commissioner and the same cannot be accepted. It is settled law that advocate commissioner cannot collect the evidence to prove the possession of the suit property. In the present case also, the petitioners filed the aforesaid application to make inspection of the suit property and to file a detailed report with regard to the physical features of the property and hence, the reasons stated by the petitioners for appointment of advocate commissioner cannot be accepted.

8. In the decision in *Krishnamurthy T.K. Vs. Tamil Nadu Water and Drainage Board* reported in 2006(5) CTC 178, this Court, in para 9, has held as follows:

"9. The report of the Advocate Commissioner alone can never be the basis for deciding the Suit as Commissioner should not be appointed to gather evidence to prove the case of the parties. Parties should prove their case by themselves by letting in legally acceptable evidence and the report of the Advocate Commissioner can only aid the Court in evaluating the evidence to come to a just conclusion. But in this case, Advocate Commissioner was sought for and



appointed to gather the evidence to disprove the case of the revision petitioner in respect of a property which is not subject matter of the suit."

9. In another decision in *Chandrasekaran Vs. V.Doss Naidu* reported in (2005) 3 M.L.J. 473, wherein, this Court in para 10, 21 and 22, has held as follows:

"10. Countering the arguments, learned counsel for the respondent has drawn the attention of the Court to the number of documents filed along with the plaint and has submitted that in the light of the documents filed by the plaintiff and the earlier litigation, the appointment of Advocate Commissioner is not warranted. It is further submitted that the factum of possession and age of the trees are the main issues to be determined by the Court in the suit and the same cannot be delegated to the Advocate Commissioner. He has further submitted that the factum of possession is to be proved by adducing evidence.

21. The power under Art. 227 of the constitution is to be exercised by the Court in its discretion and cannot be claimed as of right by any party. Under Art. 227 of the Constitution of India, the well settled position is:-

(1) The High Court's power to revision under Art. 227 of the Constitution would be restricted to interference in cases of grave dereliction of duty or flagrant violation of law, and would be exercised most sparingly, in cases where grave injustice would be done unless the Higher Court interferes. It cannot be used as appellate or revisional power.

(2) The Power would not be exercised to correct an error of fact or of law, not being an "error of law apparent on the face of the record", or an "irregularity or illegality of procedure" unless such error affects the jurisdiction, or involves a breach of the principles of natural justice; or to reappraise the evidence.

(3) Nor will the High Court, in exercise of this power, substitute its own judgment for that of the inferior court, whether on a question of fact, or of law or interfere with the intra vires exercise of a discretionary power, unless it is "arbitrary or capricious" or unless there was no evidence at all on which the inferior Court could have come to the conclusion it did, or there was error of finding on a "jurisdictional fact". Whether the High Court found fault with the appellate court in



declining to take into consideration certain documents and took them on record, instead of substituting its opinion on the merits of the case, it should have remanded the matter back for the opinion of the appellate Court, it being the final Court of fact.

(4) Nor can the High Court, nor being an appellate Court, pass an order of remand. In short, as regards findings of fact of the inferior Courts, the jurisdiction under Art.227 is limited to only examining whether the subordinate Court kept itself within the bounds of its authority in reaching the findings of fact. Consequently, the High Court cannot quash the judgment of the subordinate Court merely on the ground that its findings of fact were erroneous, but could do so only if the subordinate Court came to its conclusion without any evidence or upon a misreading of the evidence, or if its conclusions were perverse.

There is nothing to suggest that the impugned order is perverse or in violation of law warranting interference under Art.227 of the Constitution of India.

22. Upon consideration of the facts and circumstances of the case, learned District Munsif has rightly declined to appoint Advocate Commissioner to note down the physical features and thereby elucidating the factum of possession. The impugned order does not suffer from any material irregularity. This revision petition has no merits and is bound to fail. "

10. Applying the dictum laid down in the above decisions, I find no reason to interfere with the order of the trial Court and the same does not warrant any interference of this Court.

11. In view of the above reasons, the civil revision petition fails and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar(CS)

To

The District Munsif Court, Thiruvaiyaru.

Copy to : The Section Officer, VR Section,

Madurai Bench of Madras High Court, Madurai.

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