



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (NPD) (MD) No.1690 of 2016

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Gunsasekaran represented
by his power agent Balu

:Petitioner/Appellant

Vs.

Karupayee

:Respondent/Respondent

Prayer: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the order and decreetal order made in I.A.No.63 of 2013 in A.S.No.34 of 2012 dated 10.12.2013 on the file of Sub Court, Paramakudi.

For Petitioner

: Mr.R.Murali

ORDER

The Civil Revision Petition arises against the dismissal order dated 10.12.2013 made in I.A.No.63 of 2013 in A.S.No.34 of 2012 on the file of Sub Court, Paramakudi, which was filed to appoint the advocate commissioner under Order 26 Rule 9 of C.P.C.

2.The petitioner is the appellant in A.S.No.34 of 2012 on the file of the Sub Court, Paramakudi and the plaintiff in O.S.No.7 of 2004 on the file of the District Munsif, Muthukulathur. The case of the petitioner is that the total extent of the suit property is 9 acre 25 cents situated in S.No.20. Out of the same, the maternal grandfather of the petitioner viz., Mookiah had purchased 1 acre 12-1/2 cents on the western extreme and he had sold 50 cents of eastern portion to the petitioner. The respondent had purchased the property on the east of the said 50 cents. The earlier commissioner appointed by the trial Court had filed a detailed report and plan regarding the property. However, during the pendency of the appeal, the petitioner filed I.A.No.63 of 2013 in Appeal Suit before the first appellate Court, to appoint the advocate commissioner and direct him to inspect the property and file a report and plan again.



3.The respondent herein filed counter affidavit before the first appellate Court stating that no reason has been mentioned by the petitioner for appointment of commissioner. The earlier commissioner report has not been objected by the petitioner and with an intention to drag on the proceedings, the petitioner has filed the said interlocutory application.

4.The first appellate Court, after considering the averments in the petition and counter affidavit and also perused the materials available on records, dismissed the application as devoid of any reason or grounds for appointment of a fresh commissioner. Therefore, the petitioner has come forward with this revision petition.

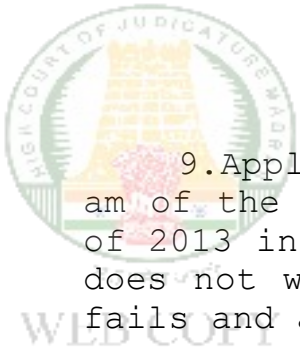
5.Heard the learned counsel for the petitioner and perused the materials available on records.

6.The admitted facts are that earlier a commissioner was appointed by the trial Court and he has inspected the property and filed a detailed report and plan. However, the petitioner has not objected the same at the time of filing the report and plan before the trial Court. Now, the petitioner has filed I.A.No.63 of 2015 without any sufficient reasons to appoint the advocate commissioner, as prayed in the above interlocutory application, which cannot be entertained at the stage of appeal itself.

7.Further in the present application also, the petitioner has not even stated any reasons as to why the earlier commissioner's report has to be rejected and there is also no whisper that the Commissioner has not executed the warrant properly and there is no reason for scrapping of the earlier commissioner's report.

8.In the case in C.Panneerselvam V. Padmaja reported in 2014 (1) MWN (Civil) 268, this Court has held as follows in para12 of the judgment:

"12.The Interlocutory Application could have been filed under Order 26, Rule 9 of the Code. Even as per Order 26, Rule 9 of the Code, the petitioner/Defendant is not entitled to seek appointment of Commissioner for the purpose of collecting evidence in a suit. The relief sought for is to measure "A" Schedule properties, which is admittedly belongs to the Respondent/Plaintiff and therefore, the Petitioner/Defendant has no legal pleas, seeking an Order to measure the property belongs to the Respondent/Plaintiff and raise a legal issue against the impugned order passed by the Court below, dismissing the application."



9. Applying the dictum laid down in the above said decision, I am of the view that the order dated 10.12.2013 made in I.A.No.63 of 2013 in A.S.No.34 of 2012 on the file of Sub Court, Paramakudi, does not warrant any interference and the civil revision petition fails and accordingly, the same is dismissed. No costs.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS)

To
The Subordinate Judge,
Paramakudi.

C.R.P. (NPD) (MD) No.1690 of 2016

Dated:-08.09.2016

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