



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.PD. (MD) .No.1765 of 2016

and

C.M.P.No.8533 of 2016

Annasamy ... Petitioner/Petitioner/Defendant
vs.

Pilavadiyan ... Respondent/Respondent/Plaintiff

PRAYER: This Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decree made in I.A.No.1957 of 2014 in O.S.No.44 of 2013, dated 08.12.2015 on the file of the Additional District Munsif Court, Srivilliputhur.

For Petitioner : Mr.V.B.Sundhareshwar

For Respondent : Mr.M.Ashok Kumar

O R D E R

The Civil Revision Petition is filed against the order passed in I.A.No.1957 of 2014 in O.S.No.44 of 2013, pending before the Additional District Munsif Court, Srivilliputhur.

2.According to the petitioner, the respondent herein filed a suit for declaration and permanent injunction in O.S.No.44 of 2013 before the Additional District Munsif Court, Srivilliputhur against the petitioner herein. In the aforesaid suit, written statement was filed by the petitioner herein on 10.07.2013. Thereafter, the suit was posted for trial. The plaintiff was examined and cross-examined and plaintiff's side evidence was concluded. At this stage, the petitioner/defendant filed the above application in I.A.No.1957 of 2014 to appoint an Advocate Commissioner to inspect the suit property along with the help of the surveyor and note down the physical features along with the surveyor and submit a report to the Court. The above application was dismissed, after hearing the parties. Therefore, aggrieved by the said order, the petitioner has filed the present Civil Revision Petition.

3.Per contra, the learned counsel for the respondent submitted that the revision petitioner filed the aforesaid interlocutory application for the appointment of Advocate Commissioner only for the purpose of proving the possession and



enjoyment of the suit property. Therefore, the trial Court rejected the application filed by the revision petitioner, stating that the Advocate Commissioner cannot collect the evidence to prove the possession of the property. Therefore, the order of the trial court is perfectly valid in law.

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4. Heard the learned counsel for the petitioner and the learned counsel for the respondent. Perused the material documents carefully.

5. Admittedly, the revision petitioner has filed an application in I.A.No.1957 of 2014 before the trial court for the appointment of Advocate Commissioner and to inspect the suit property along with the surveyor and submit a report before the Court. The suit was filed by the respondent herein in the month of February 2013 and the written statement was filed by the petitioner herein/defendant on 10.07.2013. Thereafter, the case was taken up for evidence of P.W.1 and P.W.1 was cross-examined and plaintiff's side evidence was concluded. At this stage, the present application has been filed. After considering the submissions made on either side, the trial Court has come to the conclusion that the application filed by the revision petitioner, at this stage, on the conclusion of plaintiff's side evidence, cannot be sustainable. Further, the trial court has observed that the application in I.A.No.1957 of 2014 for appointment of advocate commissioner is only for the purpose of proving possession and enjoyment of the suit property.

6. 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 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."

7. 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



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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. "

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

9.In view of the above reasons, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(Cs II)

/True copy/

Sub Assistant Registrar

To

The Additional District Munsif, Srivilliputhur.

+1cc to Mr.M.Ashokkumar, Advocate Sr.No.54533

vs

sm:KM:7.11.2016:4P/3C

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