



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (PD) (MD) No.2141 of 2016

and

C.M.P. (MD) No.10011 of 2016

1.Sevugan

2.Arumugam

:Petitioner

Vs.

Chinnathambi

:Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the order dated 20.04.2016 made in I.A.No.1069 of 2015 in O.S.No.145 of 2014 on the file of the District Munsif, Devakottai and set aside the same.

For Petitioner

: Mr.J.Anandkumar

ORDER

The civil revision petition arises against the order dated order dated 20.04.2016 made in I.A.No.1069 of 2015 in O.S.No.145 of 2014 on the file of the District Munsif, Devakottai and set aside the same.

2.According to the learned counsel for the petitioners, the revision petitioners/plaintiff have filed the suit in O.S.No.145 of 2014, praying for declaration of title and permanent injunction against the respondent herein. During the pendency of the suit, the petitioners herein/plaintiffs have also filed an interlocutory application in I.A.No.1069 of 2015 before the learned District Munsif, Devakottai, for appointment of an advocate commissioner to inspect and measure the suit property with the help of surveyor and to submit a report and plan before the trial Court.

3.Counter affidavit has been filed by the respondent/plaintiff, objecting the appointment of advocate commissioner stating that the said interlocutory application has been filed by the petitioner only to drag on the proceedings and also contended that the advocate commissioner cannot be appointed to collect the evidence for the possession of the suit property. The said application was dismissed by the Court below. Aggrieved by the said order, the above civil revision petition has been filed by the revision petitioner before this Court.

4.According to the learned counsel for the petitioners, the trial Court has not appreciated the submission made by the petitioner 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 petitioner 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 for the petitioner and perused the materials available on records.

6. The petitioners filed a suit in O.S.No.145 of 2014 before the learned District Munsif, Devakottai against the respondent for the relief of declaration of title and permanent injunction. The respondent filed written statement in the said suit. Thereafter, the petitioner has filed the instant interlocutory application to appoint an advocate commissioner to inspect the suit property with the help of surveyor and to submit a report and plan before the trial Court.

7. Perusal of the affidavit, the plaintiffs have stated that the petitioners/plaintiffs are residing in and belonged to Singathirumugapatti village and the suit property was allotted under the family partition dated 15.09.1975 and after partition, the petitioners cultivated the suit property and before the parties, the properties are in common enjoyment and joint possession. After the partition, the petitioners fenced the suit properties and enjoying the same by cultivating mango, tamarind, neem, vagai, panai and firewoods. Patta also stood in the name of the petitioners. The suit properties are in their possession and enjoyment and in order to prove possession and enjoyment of the suit property, the instant application has been filed to appoint an Advocate Commissioner to inspect the property with the help of surveyor and to file a report and plan. It is settled law that advocate commissioner cannot collect the evidence to prove the possession of the suit property and hence, the reasons stated by the petitioner 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 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 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.

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

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To

The District Munsif, Devakottai.

+1cc to M/s.J.Anadkumar, Advocate in SR.63797

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