



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

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C.R.P(MD)No.469 of 2016 (PD)

and

C.M.P(MD)No.2048 of 2016

Christudhas

.. Petitioner

Vs.

1.Glory

2.Beula Rani

3.Vijila Rani

.. Respondents

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the Order and Decreetal Order, dated 27.01.2016 made in I.A.No.774 of 2015 in O.S.No.1 of 2012 on the file of Principal District Munsif Court, Kuzhithurai, and allow the Civil Revision Petition.

For Petitioner : Mr.V.M.Balamohan Thampi

For Respondents : Mr.C.Godwin

ORDER

This Civil Revision Petition has been filed to set aside the fair and decretal order, dated 27.01.2016, passed in I.A.No.774 of 2015 in O.S.No.1/2012, by the learned Principal District Munsif, Kuzhithurai.

2.The petitioner is the defendant. The respondents/plaintiffs filed O.S.No.1 of 2012 for a decree of eviction of the defendant from the suit schedule building. The petitioner filed written statement on 30.07.2012 and contesting the suit. The petitioner filed I.A.No.774 of 2015 for appointment of Advocate Commissioner, to identify the suit property, inspect the same and to file his report on the ground that P.W.1 in the cross-examination admitted that the re-survey number mentioned in the Exs.A16 to A18 is not correct and Door No.1/110 is in survey No.115/11, 115/22 and 115/35 and house is in Re survey No.115/33. In fact, the house is in survey No.115/16. The respondents/plaintiffs filed counter affidavit denying the allegations made by the petitioner. The respondents stated that the petitioner filed suit in O.S.No.373 of 2000 for partition and the same was dismissed, as he has no right in the property. The petitioner filed an application to set aside the ex-parte decree on two occasions and subsequently, on his application, the decree was set aside. The petitioner admitted in his written statement that the suit schedule property is in Re survey No.115/33. The suit is for eviction of the petitioner. Now, the



petitioner has filed this application, to appoint an Advocate Commissioner, only to prolong the issue and prayed for dismissal of the I.A. The learned Judge, considering the facts and the materials on record, dismissed the application. Against that order, the petitioner filed the present Civil Revision Petition.

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3.The learned counsel for the petitioner contended that the learned Judge erred in holding that the petitioner admitted that the suit schedule property is in survey No.115/33. The learned Judge failed to see the suit property is in re-survey No.115/11. The learned Judge failed to see the boundaries mentioned in Ex.A5 documents. The suit building in O.S.No.373 of 2000 and present suit property, is different. The commissioner can be appointed at any point of time. The learned Judge has erroneously held that the petition has been filed only to drag on the proceedings.

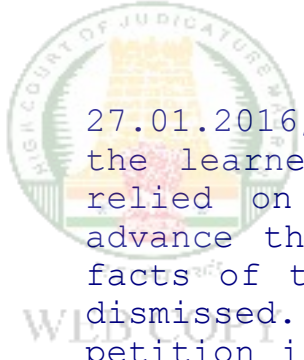
4.The learned counsel for the petitioner relied on the judgment reported in **(2013) 7 MLJ 600 (Ganesa Gounder vs. Chakkaravarthy and others)**

"No doubt the petitioner has filed the application at the appellate stage. He has also given sufficient reason for filing such application at the appellate stage. It is well settled that commission application can be filed even at the appellate stage. Therefore, the delay cannot be the reason for rejecting such application, when the petitioner has given valid reasons for appointment of Advocate Commissioner."

5.Per contra, the learned counsel for the respondents contended that in the written statement filed by the petitioner, he admitted that the suit property is in survey No.115/33. The learned Judge has extracted the said portion and then only, dismissed the application. The suit filed by the petitioner for partition for very same property, was dismissed. The petitioner was set ex-parte on two occasions and the suit is posted for recording his evidence. At this stage, he has filed this petition only to prolong the issue.

6.I have heard the learned counsel appearing for the petitioner and the respondents and considering the judgment relied on by the counsel for the petitioner and also perused the entire materials on record.

7.From the records, it is seen that the suit is filed for eviction of the petitioner. It is for the respondents to prove their title and identity of the property. Further, the petitioner has admitted in the written statement that the suit property is in survey No.115/33. Further, when the suit is posted for evidence on this date, the petitioner has come out with the present petition. Therefore, there is no reason to interfere with the order dated,



27.01.2016, passed in I.A.No.774 of 2015 in O.S.No.1 of 2012, by the learned Principal District Munsif, Kuzhithurai. The judgment relied on by the learned counsel for the petitioner, do not advance the case of the petitioner and is not applicable to the facts of the present case. Hence, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed. Since the suit is of the year, 2012, the learned Principal District Munsif Court, Kuzhithurai, is directed to dispose the suit as expeditiously as possible, in any event, not later than 31st August, 2016.

Sd/

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Kuzhithurai.

+1cc to M/s.V.M.Bala Mohan Thampi, Advocate in SR.o.13414

+1cc to M/s.C.Godwin, Advocate in Sr.No.13397

CN/GJB-DP/SAR1/28.03.2016/3P-4C

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