



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.11.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE D. KRISHNAKUMAR

CRP (MD).No.2206 of 2016 and
C.M.P.(MD) No. 10205 of 2016

Soosairaj : Petitioner/Petitioner/Appellant

Vs.

Sesurathinam : Respondent/Respondent/ Respondent

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 29.04.2016 passed in I.A.No.441/2015 in A.S.No.111/2013 on the file of the Subordinate Judge, Sivagangai.

For Petitioner : Mr. K.N.Govardhanan

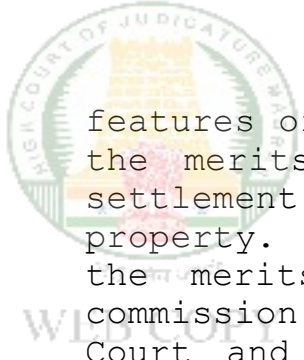
ORDER

The Civil Revision Petition is filed to set aside the fair and decreetal order dated 29.04.2016 passed in I.A.No.441/2015 in A.S.No.111/2013 on the file of the learned Subordinate Judge, Sivagangai.

2. The petitioner filed aforesaid Interlocutory Application to appoint an Advocate Commissioner to inspect the schedule property and file a report along with plan and photographs.

3. According to the petitioner, the petitioner is the appellant in the above appeal and second defendant in the suit. In the plaint, fifth item of schedule property is a nanja land having S.No.220/19 and there are two houses. The western side house is allotted to the petitioner and Door No.1 / 220 was assigned to the house. The Eastern side house Door No. 1/221 was allotted to the plaintiff and he is having separate electricity connection. Suppressing the said facts the respondent / plaintiff has filed the suit as if no houses are available in the 5th item of the schedule property. Hence, the petitioner filed the present application to appoint an Advocate Commissioner to note down the physical features of the schedule property and file a detailed report along with plan and photographs.

4. The trial Court without considering the case of the respondent, accepting the counter statement filed by the respondent that he has filed the suit to declare the cancellation of the settlement deed as null and void. Therefore, the physical



features of the schedule property will not reflect any changes in the merits of the case. The whole case is depending on the settlement deed but not on the physical features of the schedule property. Hence, commission inspection will not be helpful to decide the merits of the suit. Already the petitioner had filed commission application in I.A.No. 258 of 2012 before the trial Court and the same was dismissed, against that order CRP(MD). No.1931 of 2012 was filed. After two years from the date of filing the appeal when it is pending for argument the petitioner has come forward with this vexatious application. By accepting the contention of the counsel for the respondent, the trial Court has dismissed the application.

5. The petitioner filed an application before the appellate Court to appoint an Advocate Commissioner and to note down the physical features and file detailed report. The prayer in the suit before the trial Court is that cancellation of settlement deed NO.3222 of 2009 dated 22.10.2009 is null and void, further to declare the settlement deed No.3244 of 2009 dated 23.10.2009 is null and void. Therefore, the aforesaid relief sought for in the suit is only for declaration of settlement deed dated 23.10.2009 and cancellation of settlement deed dated 22.10.2009. Therefore, the present application to appoint an Advocate Commissioner to note down the physical features could not be countenance. Further the present application has been filed at the stage of the appeal suit. Wherein this Court has already decided that application is not maintainable at the stage of appeal suit. Further, the Court below also observed that it is only on the basis of evidence of both sides and not on the basis of the report submitted by the Advocate Commissioner. Therefore, the trial Court has rightly dismissed the application. Hence, this Court does not warrant any interference in the order passed by the Court below.

6. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar[Writs]

/True copy/

Sub Assistant Registrar

To
The Subordinate Judge, Sivagangai.
Copy to: The section officer/Record keeper,
VR section, Madurai Bench.
+1cc to Mr.K.N.Govardhanan, SR.66697

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