

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 2.6.2017

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(NPD) No.1296 of 2017

and

C.M.P.No.6052 of 2017

Steaphen

.. Petitioner/Appellant

Vs..

1 Thomson

2 S.Sarangapani

.. Respondents/Respondents

This Civil revision is filed under Section 115 of Civil Procedure Code against the fair and decreetal order dated 16.2.2017 passed in I.A.No.216 of 2016 in A.S.No.6 of 2016 on the file of the III Additional District Judge, Thiruvallur at Poonamallee.

For Petitioner : Mr.P.Jagadeesan

For Respondents : Mr.Amar D.Pandiya

ORDER

The facts of this case in brief as follows:

Petitioner has filed the suit in O.S.No.53 of 2012 before the Sub Court, Poonamallee for declaration, injunction in respect of the 'A'

schedule property, consequential injunction in respect of the 'B' schedule property, recovery of vacant possession of 'B' schedule mentioned property and for mandatory injunction in respect of the 'C' schedule mentioned property. Petitioner has filed an application in I.A.No.152 of 2012 before the trial Court for appointment of an Advocate Commissioner in respect of the suit property. The trial Court appointed an Advocate Commissioner and the report and sketch were filed before the said Court pending the suit. The petitioner had objected for the Commissioner's report and equally, the respondents have also raised objection against the report. The objection was rejected by the trial Court and dismissed the said application. However, the respondents/defendants have preferred revision before this Court. But the revision was also dismissed by this Court in C.R.P.No.1385 of 2015 by order, dated 7.4.2015.

2 Thereafter, on 16.3.2016, the suit was dismissed by the trial Court and an appeal has been preferred in A.S.No.6 of 2016 before the III Additional District Judge, Tiruvallur. Pending appeal, the petitioner raised his earlier plea again before the Appellate Court by filing an application in I.A.No.216 of 2016 under Order XXVI Rule 9

r/w Sec.94(e) & 151 of C.P.C. for setting aside the earlier Advocate Commissioner's report and plan filed in I.A.No.152 of 2012 and to appoint fresh Advocate Commissioner to locate and inspect the suit A, B, C schedule mentioned property.

3 After hearing both sides, the Appellate Court dismissed I.A.No.216 of 2016 for the reason that in the earlier round of litigation, the respondent herein filed C.R.P. challenging the rejection of the said application and the C.R.P. No.1385 of 2015 was also dismissed. Further, it is observed that the petitioner has to establish his case through oral and documentary evidence before the Court.

4 The learned counsel for the revision petitioner submitted that the observations made by this Court in C.R.P.No.1385 of 2015 would not in any way preclude the petitioner from filing the present application, especially when this Court held that the burden of proof lies only on the plaintiff to establish his case. Hence, the order passed by the Appellate Court is liable to be set aside.

5 Per contra, the learned counsel for the respondents would submit that the appellate Court has rightly dismissed the said

application since the same plea raised before this Court in revision was dismissed by this Court in C.R.P.No.1385 of 2015. Hence, the revision is liable to be dismissed.

6 Heard both sides, perused the impugned order and the materials on record.

7 Both side counsel accepted the provision of law that the Appellate Court has got power to receive any additional evidence or documents detrimental to the real issues among the parties concerned.

8 In the light of the above said legal provisions, without going into merits of the case and the contentions raised by the parties, by consent of the parties, this Court passed the following orders:

(i) The order passed by the Court below in I.A.No. 216 of 2016 is confirmed.

(ii) The Appellate Court shall decide the issues involved in the suit without being influenced by any of the observations made in the interlocutory application.

(iv) The appellate Court shall decide the real issues involved in the suit, if so desires, either by directing the parties

concerned to file an application or by exercising suo motu power if it is permissible under law at the time of hearing of the Appeal suit and pass orders after providing opportunities to the parties concerned.

(v) With the above observations, this revision petition is dismissed.

Consequently, connected miscellaneous petition is also dismissed.

(v) However, no order as to costs in this revision.

2.6.2017

Speaking/Non Speaking order

Index : Yes / No

Internet : Yes / No

vaan

To

1 The III Additional District Judge,
Thiruvallur at Poonamallee.

D.KRISHNAKUMAR, J.

vaan

C.R.P.(NPD) No.1296 of 2017

Dated: 2.6.2017

<http://www.judis.nic.in>