

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **13.02.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD.No.1198 of 2014
and
M.P.No.1 of 2014

P.G.Murugesan .. Petitioner

vs

P.S.Kumaravel .. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 11.11.2013 passed by the learned District Munsif, Palacode in I.A.No.739 of 2013 in O.S.No.144 of 2013.

For Petitioner : Mr.C.Munusamy

For Respondent : No appearance

ORDER

The first defendant has preferred this revision challenging the order appointing an Advocate commissioner, by allowing the application filed by the respondent/plaintiff under Order 26 Rule 9 of the Code of Civil Procedure.

2. The brief facts of the case would run thus:

(i) The suit is filed for declaration, recovery of possession and for mandatory injunction. Pending suit, the plaintiff, has filed an application to appoint a Commissioner by stating that the suit property fell to his share in a partition. According to the plaintiff, the suit property originally belonged to one P.C.Sivalingam who died on 19.01.2013. The plaintiff and the defendants 2 to 6 are the heirs of the deceased Sivalingam. Even during his life time, the suit property was allotted to the share of the plaintiff and he has been in possession of the same. While so, an extent of 22.50 acres of land belonging to the family, which was kept in common was sold to the first defendant by the plaintiff and the defendants 2 to 6. The first defendant, while raising the compound wall over the property purchased by him had encroached upon the plaintiff's land and put up the wall. Insofar as defendants 2 to 6 are concerned, they have got no objection, as the suit property was exclusively allotted to the plaintiff's share. Therefore, it became necessary for an appointment of a Commissioner to measure the suit property and

to mark the boundaries along with a plan. Hence the interlocutory application was filed seeking appointment of an Advocate Commissioner.

(ii) The first defendant, in his counter, had denied all the contentions raised by the plaintiff and claimed right to the suit property also.

(iii) After contest, the application was allowed appointing a Commissioner to measure the property with the help of a land surveyor and to submit a report.

(iv) The said order is under challenge in this revision.

3. It is contended by the learned counsel for the first defendant that if the Commissioner visits the suit property, it would cause hardship to the first defendant. It is further contended that the petitioner herein has filed a suit for specific performance in O.S.No.197 of 2013 and as a counter blast to the same, the the present suit has been filed by the plaintiff seeking

declaration. He would also contend that the plaintiff is only trying to improve his case by gathering evidence through the report of the Commissioner.

4. Heard the learned counsel for the petitioner. Despite service being effected, there is no representation on behalf of the respondent.

5. As stated earlier, the suit is one for recovery of possession and also for mandatory injunction. The specific allegation of the plaintiff is that the first defendant has encroached upon the suit property and had put up a compound wall over the property belonging to the plaintiff. That being the case, the report of the Commissioner with the help of a surveyor and the plan would be of assistance to the Court to arrive at a right conclusion over the dispute between the parties. The report of the Commissioner is only a piece of evidence and that is not the only evidence. Therefore, the first defendant cannot have any grievance over the appointment of the Commissioner by the Court below.

6. In such circumstances, I do not find any infirmity in the order passed by the Court below, warranting interference in this revision. Accordingly, the revision fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : Yes/No

Internet: Yes

To

The District Munsif, Palacode

PUSHPA SATHYANARAYANA,J.,

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