

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1428 of 2017

& C.M.P.No.6654 of 2017

B.Manimurugan

.. Petitioner

Vs.

K.S.Krishna

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 06.03.2017 in I.A.No.162 of 2017 in O.S.No.118 of 2011 on the file of the District Munsif Court, Tiruvarur.

For Petitioner : Mr.C.Munusamy

For Respondent : Mr.P.Thiagarajan

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 06.03.2017 in I.A.No.162 of 2017 in O.S.No.118 of 2011 on the file of the District Munsif Court, Tiruvarur.

2.The petitioner is the plaintiff and the respondent is the defendant in O.S.No.118 of 2011. The petitioner filed a suit for permanent injunction restraining the respondent not to evict the petitioner through illegal and forcible manner. The respondent filed a written statement on 23.01.2012 and is contesting the suit. The trial commenced and the petitioner wanted to mark the unregistered mortgage deed dated 30.10.2008, which was executed by the respondent. The learned trial Judge has directed the petitioner to pay stamp duty penalty and registration charges, against which, the petitioner filed C.R.P.No.1322 of 2013, obtained interim orders and the said civil revision petition is dismissed on 24.03.2017.

3.The cross examination of the petitioner/PW1 was completed on 11.03.2017 and closed his side evidence. At this stage, the petitioner filed the present I.A.No.162 of 2017 for appointment of an Advocate Commissioner to inspect the suit property, note down the physical features and to file report to show that the petitioner is in possession of the suit property.

4.According to the petitioner, the respondent received a sum

of Rs.3,25,000/- and executed a mortgage deed on 30.10.2008 and handed over the possession of the suit property to the petitioner. The petitioner is carrying on business in the suit property in the name and style of 'R.B.Sarees'. The petitioner has filed the application for appointment of Advocate Commissioner to inspect the suit property and note down its physical features.

5.The respondent has filed a counter affidavit denying the averments made by the petitioner and submitted that the petitioner marked unregistered mortgage deed dated 30.10.2008. The Trial Court directed the petitioner to pay the stamp duty penalty and registration charges in I.A.No.162 of 2017 for marking the document. The petitioner filed C.R.P.No.1322 of 2013 and obtained stay of the said order and did not pay the stamp duty penalty and registration charges. After completion of evidence on behalf of the petitioner, the petitioner has filed the present application only to drag on the proceedings. The petitioner filed the suit only for injunction, therefore, the application for Advocate Commissioner is not necessary and the petitioner has to prove his possession by letting in oral and documentary evidence.

6.The Trial Court after considering the averments mentioned in the affidavit, counter affidavit, arguments advanced by the counsel for the parties and the judgments relied upon by the parties, dismissed the application holding that the Advocate Commissioner cannot be appointed for collecting evidence, against the same, the present civil revision petition is filed by the petitioner.

7. Heard the learned counsel appearing on behalf of both the parties and perused the materials available on record.

8. The learned counsel appearing for the petitioner relied upon the following judgments in support of his contention:

- (i) 2008 (5) CTC 181 (Meenakshi v. Vennila and another);
- (ii) 2015 SCC Mad 629 (Varadharajan and another v. S.Paramasivam);
- (iii) 2016 SCC Mad 8629 (Radha and others v. Mahilan);
- (iv) 2017 SCC Mad 302 (K.Ezhilarasan v. Karuppathal);

He contended that even in the suit for injunction, Advocate Commissioner can be appointed to find out the possession of the petitioner at any stage of the suit.

9. In the facts and circumstances of the present case, Advocate Commissioner can be appointed to collect evidence in the interest of justice is untenable and not applicable to the facts of the present case.

10. On the other hand, learned counsel for the respondent/caveator submitted that the application for appointment of Advocate Commissioner is not maintainable. As the petitioner filed the suit for injunction and has not complied with the order of the Trial Court directing him to pay the stamp duty penalty and registration charges, the petitioner cannot maintain the application for appointment of Advocate Commissioner to collect evidence. In support of his contention, he has relied upon the following judgments:

- (i) 2008 (5) CTC 181 (Meenakshi v. Vennila and another);
- (ii) 2014(3)MWN (Civil)51 (S.Saravanan v. Mahalakshmi @G.Rohini);
- (iii) 2015 SCC Online Mad 629 (Varadharajan and another v. S.Paramasivam);
- (iv) 2017 SCC Online Mad 302 (K.Ezhilarasan v. Karuppathal);

11. In the suit for injunction, the Advocate Commissioner need not be appointed. The contention of the learned counsel for the respondent has considerable force. The learned trial Judge after considering all the materials available on record and judgments relied upon by the learned counsel for the respondent properly, dismissed the application by giving valid and cogent reasons. Therefore, there is no illegality or irregularity warranting interference by this Court with the order dated 06.03.2017 passed by the District Munsif Court, Tiruvarur.

12. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.04.2017

Index : Yes

dm/kj

V.M.VELUMANI, J.

dm/kj

To

The District Munsif Court,
Tiruvarur.

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