

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.04.2017

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THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

C.R.P.[PD] Nos.1478 and 1479 of 2017
and
C.M.P.No.6860 of 2017 in C.R.P.[PD] No.1478 of 2017

Jayakodi

.. Petitioner
in both CRP

Vs.

1.Andamuthu
2.S.Shanmugam

.. Respondents
in both CRP

Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decreetal orders dated 23.12.2016 made in I.A.No.582 of 2016 and I.A.No.583 of 2016 in O.S.No.148 of 2011 on the file of the learned District Munsif-cum-Judicial Magistrate, Perundurai.

For Petitioner : Mr.N.Manokaran
For Respondents : No Appearance

COMMON ORDER

These Civil Revision Petitions have been filed seeking to set aside the fair and decreetal orders dated 23.12.2016 passed in I.A.No.582 of 2016 and I.A.No.583 of 2016 in O.S.No.148 of 2011 on the file of the learned District Munsif-cum-Judicial Magistrate, Perundurai.

2. Since the issues involved in both the Civil Revision Petitions are one and the same, Common Order is passed.

3. The revision petitioner is the defendant and the respondents are the plaintiffs in O.S.No.148 of 2011 on the file of the learned District Munsif-cum-Judicial Magistrate, Perundurai, filed praying for permanent injunction restraining the petitioner from interfering with their peaceful possession and enjoyment of the suit property. The petitioner filed written statement on 21.09.2011.

4. The respondents filed I.A.No.503 of 2012 for appointment of an Advocate Commissioner. The Advocate Commissioner was appointed to measure the suit property with the help of surveyor. The Advocate Commissioner measured the property and filed the report along with plan. The petitioner filed two applications in I.A.Nos.582 and 583 of 2016 to scrap the Commissioner's report and plan and to re-issue the Commission warrant to the same Commissioner to measure the suit property with the help of District Surveyor and submit his report and plan.

5. According to the petitioner, the surveyor committed mistake in fixing the survey stones without finding out the main survey stone and filed the false report and plan. The respondents filed counter and opposed the said applications contending that the Commissioner and surveyor inspected the suit

property on 30.11.2012 and at the time of inspection, the petitioner, one Sakthivel, who is her house owner and her Advocate were present. The petitioner and the said Sakthivel has not filed any objection to the Commissioner's report. When the suit was posted for trial, the petitioner did not appear and an ex parte order was passed and the suit was posted for recording ex parte evidence. In the year 2014, the petitioner filed similar application for re-issue of warrant of Commission and the same was returned by the Court. Without filing any objection to the Commissioner's report, the petitioner has filed these two Interlocutory Applications.

6. The learned Judge, considering the averments in the counter affidavit, perusing all the materials on record and after hearing the arguments of the counsel for parties, dismissed the applications holding that in the suit for permanent injunction, it is for the plaintiffs to prove their case and further held that the petitioner has taken out these two Interlocutory Applications, after three years of filing of the report by the Advocate Commissioner and the petitioner was set ex parte. Against this Common Order, the present Civil Revision Petitions have been filed.

7. Heard the learned counsel appearing for the petitioner.

8. The respondents filed O.S.No.148 of 2011 for permanent injunction restraining the petitioner from interfering with peaceful possession and

enjoyment of the suit property. The petitioner in the written statement disputed the claim of the respondents. On the application filed by the respondents in I.A.No.503 of 2012, an Advocate Commissioner was appointed to measure the suit property with the help of surveyor and file his report along with the plan. The petitioner, her house owner Sakthivel and her Advocate were present, at the time of inspection by the Advocate Commissioner. They did not raise any objection.

9. The averment of the respondents that the Advocate Commissioner and Surveyor measured the property in the presence of the petitioner, her house owner and her Advocate and they did not raise any objection, when the Surveyor measured the property and the same was not disputed by the petitioner. The petitioner was set ex parte as she did not appear. When the suit was posted for trial, she filed an application to set aside the ex parte order.

10. The petitioner filed two applications in I.A.Nos.582 and 583 of 2016 to scrap the Commissioner report and plan and to re-issue the Commission warrant to the same Commissioner to measure the suit property with the help of District Surveyor and submit his report and plan. These applications have been filed by the petitioner after a period of four years of the report of the Advocate Commissioner without filing any objection to the said report. Report of the Advocate Commissioner is not a conclusive evidence to decide the issue in the suit. But, it can be taken into consideration, while deciding the issue in

the suit. In a suit for permanent injunction, it is for the plaintiff to prove the case and the issue to be decided, based on the averments made in the plaint and the evidence let in by the plaintiff.

11. The learned Judge has considered all the materials on record in the proper perspective and dismissed the applications by giving valid reasons. In the circumstances, there is no infirmity or irregularity in the common order dated 23.12.2016 passed by the learned District Munsif-cum-Judicial Magistrate, Perundurai, warranting interference by this Court.

12. In the result, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

21.04.2017

Internet : Yes
gya

To
The District Munsif-cum-Judicial Magistrate,
Perundurai.

V.M.VELUMANI, J.

gya

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