

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :25.04.2017

CORAM

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

CRP (PD) No.1498 of 2017
and CMP.No.7002 of 2017

1.Perumal
2.Vengadesh
3.Prakash

.. Petitioners

Vs

1.Sivamani
2.Thiyagarajan

..Respondents

Prayer:- Civil Revision Petition filed under Section 227 of the Constitution of India, to set aside the fair and decretal order dated 01.02.2017 made in I.A.No.1422 of 2015 in I.A.No.1204 of 2009 in O.S.No.279 of 2009 on the file of the District Munsif Court, Sankagiri.

For Petitioner : Mr.G.Arul Murugan

ORDER

The petitioners have filed this Civil Revision Petition to set aside the fair and decretal order dated 01.02.2017 made in I.A.No.1422 of 2015 in I.A.No.1204 of 2009 in O.S.No.279 of 2009 on the file of the District Munsif Court, Sankagiri.

2. The petitioners are the defendants and the respondents are the plaintiffs in O.S.No.279 of 2009 on the file of the District Munsif Court, Sankari. The respondents/plaintiffs filed the suit for permanent injunction restraining the petitioners/defendants, their men, agents, servant or anyone on their behalf from in any manner disturbing the respondents' peaceful possession and enjoyment of the suit cart track either by obliteration or by any other means. Along with the said suit, the respondents/plaintiffs filed I.A.No.1204 of 2009 for appointment of Advocate Commissioner, to inspect the suit cart tracks, to identify the survey numbers in which the cart tracks are entering and passing through, to note down the existing physical features of the suit cart tracks and to measure the same with the help of V.A.O. and qualified surveyor and to file a detailed report with plan drawn to scale. The trial Court vide order dated 16.09.2009, appointed Advocate Commissioner, to inspect the property with the assistance of qualified surveyor and to note down the physical features of the same and file report before the Court with a rough sketch by 07.10.2009.

3. The learned Advocate Commissioner has filed a preliminary report on 06.02.2010, wherein it is stated that in pursuant to the order of the trial Court, the Advocate Commissioner

visited the suit property on 06.02.2010. It is submitted that the date of visit was already informed to the parties and the concerned officials. On the said date, the surveyor was not available and the suit property was not measured. However, the learned Commissioner, with the assistance of Village Administrative Officer, identified the suit property, noted down the physical features and submitted his preliminary report. Thereafter, the learned Advocate Commissioner filed an interim report submitting that the respondents/plaintiffs have filed a memo, in which, it is stated that the interim report filed by the learned Advocate Commissioner is sufficient and there is no necessity to measure the suit property and to file a final report. The said memo was opposed by the petitioners/defendants. In view of the objection raised by the petitioners/defendants, the learned Judge has rejected the said memo vide order dated 18.06.2012. It is contended that respondents/plaintiffs also did not appear at the time of hearing the application in I.A.No.1204 of 2009, and the trial Court had closed the commission application on 28.09.2012.

4. The petitioners/defendants filed another I.A.No.1422 of 2015 to re-open I.A.No.1204 of 2009 and re-issue the commission warrant to the Commissioner and direct him to visit the suit property and measure the same with the help of qualified surveyor

and VAO and to file a comprehensive report with plan drawn to scale. It is contended by the learned counsel for the petitioners/defendants that the learned Judge has directed the learned Commissioner to file a final report and inspite of time being granted to the Commissioner, he did not file a final report.

5. The respondents/plaintiffs filed counter and opposed the said application in I.A.No.1422 of 2015. According to the respondents/plaintiffs, the report filed by the Commissioner is sufficient to decide the case and now the application filed by the the petitioners/defendants in the year 2014 is a belated one, and there is no necessity to re-open the commission petition at this stage. It is also contended that the petitioners/defendants have also suppressed the fact that they have filed a writ petition in W.P.No.24123 of 2013 before this Court against the Government officials, and the respondents/plaintiffs for the same relief, and obtained an interim injunction. Subsequent to the notice issued to the respondents in the writ petition, the respondents/plaintiffs submitted a counter along with the Commissioner's report, based on which, the interim order granted in writ petition was vacated by this Court and hence prayed for dismissal of I.A.No.1422 of 2015.

6. The learned District Munsif Judge, Sankagiri, considering the averments mentioned in the affidavit and the counter affidavit and considering the materials available on record, dismissed the application in I.A.No.1422 of 2015 holding that the application in I.A.No.1204 of 2009 for appointment of Commissioner was closed as early as 28.09.2012, and if the final report of Commissioner is really necessary, then the petitioners/defendants ought to have filed an application at that time itself. Moreover, in the counter affidavit filed by the respondents/plaintiffs, it is stated that the petitioners/defendants have filed a writ petition before this Court, which fact was not brought before the trial Court by the petitioner in the present application. The trial Court also held that it is for the respondents/plaintiffs to prove the case, since the suit for permanent injunction is filed by them. Further, it has been held that the application in I.A.No.1204/2009 was closed on 28.09.2012, and now the application filed by the petitioners in the year 2014 to re-open I.A.No.1204 of 2009 at a belated stage is not maintainable. Challenging the said order of dismissal in I.A.No.1422 of 2015, the petitioners/defendants have filed the present revision petition.

7. Heard the learned counsel appearing for the petitioners and perused the materials placed before this Court.

8. On perusal of the materials, it is seen that the respondents/plaintiffs have filed the suit for permanent injunction against the petitioners/defendants. It is for the respondents/plaintiffs to let in evidence to substantiate their claim and prove their case. The report of the Commissioner is only to assist the Court to decide the suit. It is for the Court either to accept or reject the report of the Advocate Commissioner. In view of these facts, the application in I.A.No.1422 of 2015 filed by the petitioner, to re-open I.A.No.1204 of 2009 and to reissue the commission warrant to the Commissioner is not maintainable and the same is devoid of merits. The reason given by the learned District Munsif Judge, Sankagiri are cogent and valid. There is no irregularity or illegality in the order dated 01.2.2017 passed by the learned District Munsif Judge, Sankagiri, warranting interference by this Court.

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

25.04.2017

ds

Speaking order/Non-speaking order
Index : Yes/No

To:

The District Munsif Court
Sankagiri.

V.M.VELUMANI,J

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