

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2017

CORAM:

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1827 of 2017
and CMP.No.8759 fo 2017

Senthil Kumar

.. Petitioner

Vs.

R.Raja

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decretal order dated 23.02.2017 made in I.A.No.1560 of 2015 in O.S.No.288 of 2015 on the file of the District Munsif, Perambalur.

For Petitioner : M/s.C.S. Associates

ORDER

The Civil Revision Petition has been filed praying to set aside the order and decretal order dated 23.02.2017 made in I.A.No.1560 of 2015 in O.S.No.288 of 2015 on the file of the District Munsif, Perambalur.

2. The petitioner is the third defendant and respondent is the plaintiff in O.S.No.288 of 2015 on the file of the District Munsif Court at Perambalur. The respondent filed a suit for

permanent injunction restraining the petitioner and other defendants from interfering with the respondent's peaceful possession and enjoyment of the suit property. The petitioner filed an application in I.A.No.1560 of 2015 for appointment of an Advocate Commissioner on the ground that the respondent may trespass into the suit property and construct a super structure and thereby the physical features of the suit property will be changed.

3. The respondent filed counter and opposed the said application and submitted that the Advocate Commissioner can be appointed only if there is any boundary dispute, but in the present case, the respondent had filed the suit for injunction and therefore, the application filed by the petitioner for appointment of is not maintainable. He also contended that the petitioner has to prove trespass into the suit property by the respondent by independent evidence and not by collecting evidence through the Advocate Commissioner.

4. The learned Judge, taking note of the fact that already two suits connected to this suit in O.S.No.288 of 2015 is pending for trial, in which, no application for appointment of

Advocate Commissioner was filed by the petitioner, who is a party to the said suits, and also considering that there was a direction of this Court to dispose of the connected suits on or before 30.06.2017, dismissed the application in I.A.No.1560 of 2015 vide order dated 23.02.2017.

5. Challenging the said order of dismissal dated 23.02.2017 passed by the learned District Munsif Judge, Perambalur in I.A.No.1560 of 2015, the present Civil Revision Petition has been filed.

6. Heard the learned counsel appearing for the petitioner and also perused the materials available on record.

7. From the records, it is seen that the petitioner has filed an application for appointment of Advocate Commissioner stating that the respondent may trespass in the suit property, construct superstructures illegally and change the physical features of the suit property. The suit is for permanent injunction and it is for the respondent to prove his possession. Similarly, it is for the petitioner to prove the trespass if any into the suit property by the

respondent, only by acceptable evidence, and not by the report of the Advocate Commissioner. Hence, there is no illegality or infirmity in the order passed by the learned District Munsif, Perambalur in I.A.No.1560 of 2015, warranting interference by the Court.

8. In the result, the Civil Revision petition is devoid of merits and hence dismissed. It appears that there was a direction of this Court to dispose of the connected suits before 30.06.2017, the learned District Munsif, Perambalur, is directed to dispose of the present suit in O.S.No.288 of 2015, as expeditiously as possible, in any event not later than two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

12.06.2017

ds

Speaking Order/Non Speaking Order

Index : Yes / No

Internet : Yes / No

To:

The District Munsif Court,

Perambalur.

V.M.VELUMANI,J.

ds

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