

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1983 of 2017
& C.M.P.No.9589 of 2017

K.Mani

.. Petitioner

Vs.

1. Ramalingam

2. Nandakumar

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 24.03.2017 passed by the learned District Munsif, Coonoor in I.A.No.376 of 2016 in O.S.No.28 of 2013.

For Petitioner : Mr.A.Immanuel

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 24.03.2017 passed by the learned District Munsif, Coonoor in I.A.No.376 of 2016 in O.S.No.28 of 2013.

2. The petitioner is defendant and respondents are the plaintiffs in O.S.No.28 of 2013. Respondents filed suit for permanent injunction restraining the petitioner from interfering with the respondents' peaceful possession and enjoyment of the suit property. The petitioner filed written statement in the year 2013 and is contesting the suit.

3. Earlier, the respondents filed I.A.No.242 of 2014 for appointment of an Advocate Commissioner. In the said application, Advocate Commissioner was appointed and he visited the property and filed his report on 09.12.2015 along with sketch. The petitioner filed objection to the Commissioner's report. PW1 was examined in chief. The petitioner took number of adjournments for cross-examining PW1, but he did not cross examine PW1. The respondents' side evidence was closed. The suit was posted for petitioner's side evidence. At this stage, petitioner filed an application in I.A.No.376 of 2016 to set aside the Commissioner's report and to appoint a second Commissioner and filed an application in I.A.No.377 of 2016 to permit him to cross examine the Advocate Commissioner and to set aside his report.

4. According to the petitioner, Advocate Commissioner did not properly execute the warrant of Commission issued to him. Advocate Commissioner mentioned in his report that the respondents are owning 3 cents, whereas respondents are owning only 2 cents of land in the suit property. The Advocate Commissioner did not mention and explain the tile documents of the respondents.

5. The respondents filed counter affidavits and opposed the said applications.

6. The learned Judge, considering the affidavit, counter affidavit, materials available on record, warrant of Commission and the report of the Advocate Commissioner, dismissed the applications, holding that Advocate Commissioner has properly performed his duty as per warrant of commission issued to him.

7. Against the order of dismissal dated 24.03.2017 made in I.A.No.376 of 2017, the present civil revision petition is filed by the petitioner.

8. Heard the learned counsel for the petitioner and perused the materials available on record.

9. The petitioner seeks permission to examine the Advocate Commissioner on the ground that the Advocate Commissioner has not explained and mentioned the title deeds of the respondents. This ground is not a valid ground for examining the Advocate Commissioner. Order XXVI Rule 10(3) of C.P.C. is the provision for examination of the Commissioner in person. The said rule reads as follows:

"(3) Commissioner may be examined in person. - Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit."

This Rule makes it clear that only when the Court in any reason dissatisfied with the proceedings of the Commissioner, Court may direct for further enquiry.

10. In the present case, the learned Judge after considering warrant of commission and report of the Advocate Commissioner, has held that the Commissioner has executed the warrant of Commission, issued to him properly. The reasoning of the learned Judge is valid. Further, it is to be noted that the petitioner did not cross examine PW1 even after taking number of adjournments. When the suit is posted for petitioner's side evidence, the petitioner has come out with the present application.

11. The learned Judge considering all the above facts dismissed the application by giving cogent and valid reasons. In these circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 24.03.2017.

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

28.06.2017

Index : Yes/No

gsa/kj

V.M.VELUMANI, J.

gsa/kj

To

The District Munsif, Coonoor.

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