

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2017

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).Nos.223 and 224 of 2017
and CMP.Nos.940 and 941 of 2017

Kandhasami

.. Petitioner in both CRPs.

Vs.

1.B.Ganesan

2.M.Shanmugam

.. Respondents in both CRPs.

C.R.P.(PD)No.223 of 2017 is filed under Article 227 of the Constitution of India, against the fair and final order dated 20.12.2016 made in I.A.No. of 2016 in O.S.No.456 of 2014 on the file of the Sub-Court, Arakkonam.

C.R.P.(PD)No.224 of 2017 is filed under Article 227 of the Constitution of India, against the fair and final order dated 07.01.2017 made in I.A.No. of 2016 in O.S.No.456 of 2014 on the file of the Sub-Court, Arakkonam.

For Petitioner : Mr.A.Gouthaman

COMMON ORDER

The petitioner as a plaintiff filed a suit in O.S.No.456 of 2014, who is the petitioner in unnumbered I.A. in O.S.No.456 of 2014, has challenged the rejection of the application filed under Order 26 Rule 9 of C.P.C., by way of C.R.P.(PD).No.223 of 2017.

2. C.R.P.(PD)No.224 of 2017 is filed for rejection of unnumbered stay application under Section 151 C.P.C. till the filing of revision against the order.

3. The petitioner herein as a plaintiff filed a suit in O.S.No.456 of 2014 for declaration of title in respect of B schedule property, which forms part of the A schedule property, recovery of possession and also injunction in respect of B schedule property. The first defendant herein has filed O.S.No.62 of 2016 for declaration of title and injunction in respect of B schedule property. The tenant/second defendant has filed O.S.No.63 of 2016 for injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The suits in O.S.Nos.62 and 63 of 2016 were filed in different Courts. As per the order of the Principal District Court, Vellore, all the suits have been ordered to transfer to the Sub-Court,

Arakkonam, wherein all the suits have been tried jointly. When D.W.1 was in witness box, the present application in I.A.No.Nil of 2016 has been filed for appointment of Advocate Commissioner to measure the petition schedule properties with the assistance of taluk surveyor. That application was rejected without numbering. The petitioner has applied for copy application and copy has been served on 10.01.2017. In the meanwhile, the petitioner has filed another application for stay the proceedings in O.S.Nos.62 and 63 of 2016 till the disposal of the revision against the order passed in unnumbered I.A. of 2016 for appointment of Commissioner and that application was also rejected, against which, the revisions have been preferred.

4. Learned counsel for the petitioner would submit that the petitioner's predecessor in title got the property by way of partition deed in the year 2004. The first defendant and his brother Gajendran were allotted to the property mentioned in E schedule property. The property morefully described as A schedule property hereunder hereinafter called the suit property was allotted to one Padmavathi Ammal, wife of Rajabathar Chetty in the B schedule property of the said partition deed. Subsequent to the partition deed, a General power of attorney was executed in favour of one Narasimhan and

Neelakandan, from whom, the petitioner/plaintiff has purchased the suit property as per the registered sale deed dated 25.05.2007 and that he has been in possession and enjoyment of the same. Now the defendants are attempted to interfere his possession and hence he filed the suit in O.S.No.456 of 2014 for the above stated relief. He would further submit that as per the partition deed, Eastern boundary is Walaja road and to prove that the first defendant was not allotted any property in the partition deed facing Walaja road, appointment of Advocate Commissioner is necessary. But without giving any notice to the respondents and an opportunity to the petitioner, that application was rejected. Hence, he prays for allowing the revisions.

5. At the time of admission, argument of the learned counsel for the petitioner is heard in length and perused the typed set of papers.

6. The suit in O.S.No.456 of 2014 is filed for declaration of B schedule property, which forms part of A schedule property, recovery of possession and also injunction in respect of B schedule property. Admittedly, the suit is of the year 2012. Since defendants/respondents herein have filed two different suits before two different Courts, they were ordered to try jointly and that all the suits were tried jointly

before the Sub-Court, Arakkonam. When plaintiff's side evidence was over and the suit was posted for cross-examination of D.W.1, the present application in I.A.No. of 2016 has been filed under Order 26 Rule 9 C.P.C. stating that the petitioner's predecessor in title was allotted to the property facing Walaja road, but the first defendant/first respondent has not allotted any property facing Walaja road and to prove the same, appointment of Commissioner is necessary. The trial Court rejected the application by holding that no Commissioner can be appointed to collect the material evidence. Admittedly, the partition deed was executed on 31.03.2004. The petitioner has to prove his defence only on the basis of that document and not collecting material evidence by way of appointment of Commissioner. Further the suit in O.S.No.456 of 2014 is filed only in the year 2012 and it has been pending for four years. But the petitioner has not taken any steps and when the suit was posted for cross-examination of D.W.1, at that time only he has filed the above application, which shows the malafide intention of the petitioner to drag on the proceedings. Hence, I am of the view that the trial Court considered all the aspects in proper perspective and rightly rejected the application. Therefore, I do not find any merits in C.R.P.(PD).No.223 of 2017 and that it is hereby dismissed.

7. Insofar as C.R.P.(PD)No.224 of 2017 is concerned, the petitioner has filed I.A.No. of 2016 for stay the proceedings in O.S.Nos.62 and 63 of 2016 till the disposal of the revision against the order passed in unnumbered I.A. of 2016 for appointment of Commissioner. This application was also rejected without numbering. The trial Court while passing rejection order held that the case is in the stage of cross of D.W.1 connected with O.S.Nos.62 and 63 of 2016 and no satisfied reason stated to stay the proceedings. Admittedly, the suit in O.S.No.456 of 2014 has been pending for four years, since it was filed in the year 2012. P.W.1's evidence has already been closed and when the suit was posted for cross-examination of D.W.1, this application is filed. According to the petitioner, this application was rejected without giving any notice to the respondents and without giving any opportunity to other side. In my view, it is not a reason for setting aside the rejection order. Therefore, I do not find any reason to interfere with the findings of the trial Court and that C.R.P(PD)No.224 of 2017 is also dismissed.

8. In the result, both the civil revisions stand dismissed. The learned Presiding Officer, the Sub-Court, Arakkonam, is directed to give the sufficient opportunity to the petitioner/plaintiff to putforth his

case for cross-examination of P.W.1. At this juncture, learned counsel for the petitioner would submit that his evidence has been closed and D.W.1 was not cross-examined. If the petitioner files any application for reopen the case and recall P.W.1 for cross-examination, the learned Presiding Officer, the Sub-Court, Arakkonam, can pass order on merits and in accordance with law after giving opportunity to both sides and dispose of the suits within two months from the date of receipt of a copy of this order. Further, the petitioner is directed to co-operate for early disposal of the suits. No costs. Consequently, connected Miscellaneous Petitions are closed.

27.01.2017

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Index:Yes/No

To

The Sub-Court, Arakkonam.

R.MALA,J.

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