

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2017

CORAM:

The Hon'ble Mr.Justice S.M.Subramaniam

C.R.P.(PD) Nos.90 and 91 of 2014

and

M.P.Nos.1 and 1 of 2014

K.Palanivel

...Revision Petitioner in both C.R.Ps.

Vs.

1. K.Chitra

2. M.Arumuga Nadar

...Respondents 1 and 2 in both C.R.Ps.

Civil Revision Petitions, filed under Article 227 of the Constitution of India, against the fair and final orders passed by the learned District Munsif Ambattur, in I.A.Nos.1723 & 1724 of 2013, in O.S.No.183 of 2002, dated 21.11.2013.

In both C.R.Ps.

For Revision Petitioners : M/s.B.Vijay

For Respondent-1 : No appearance

For Respondent-2 : Mr.V.Manohar

COMMON ORDER

The second plaintiff in O.S.No.183 of 2002, on the file of the District Munsif Court, Ambattur, is the revision petitioner herein. He along with other

person filed the said suit for the relief of permanent injunction. During the pendency of the suit, the first plaintiff filed an Interlocutory Application for appointment of Advocate Commissioner, in I.A.No.880 of 2002. The said Application was allowed, and the Advocate Commissioner also filed a detailed report, dated 04.07.2002. Not being satisfied with the report, the plaintiffs, (i.e., the revision petitioner and the first respondent) filed two Interlocutory Applications, viz., I.A.Nos.1723 and 1724 of 2013. One is to reopen the case for further evidence on the plaintiffs side and another application is for appointment of an Advocate Commissioner, to measure and locate the suit 'A' and 'B' schedule properties with the assistance of an Assistant Engineer, National Highways, Chennai. The trial Court, in and by its common order, dated 21.11.2013 dismissed both the Applications, against which, the present Civil Revision Petitions have been filed by the second plaintiff.

2. Mr.B.Vijay, learned counsel appearing for the revision petitioner contended that, though the suit is for permanent injunction, and there remains a genuine doubt with regard to the identity of 'B' schedule property, which is a strip of land, connecting 200 feet inner ring road on the western side of 'A' schedule property in S.Nos.151/1A1A1A in Koratur Village. Further, it is stated that the revision petitioner and first respondent claims 'B' schedule

property, by way of easementary right, and that is the access available to the plaintiffs from 'A' schedule property to reach the 200 feet inner ring road. Therefore, to identify the nature of the property and the location, Advocate Commissioner has to be appointed, and the case has to be reopened for recording further evidence on the plaintiffs' side. But, the trial Court, without properly appreciating all these aspects, dismissed both the Applications.

3. Per contra, Mr.V.Manohar, the learned counsel for the second respondent contended that, on earlier occasion, pursuant to the application filed by the first plaintiff, an Advocate Commissioner was appointed to measure and identify the suit schedule properties, who also submitted a report, dated 04.07.2002. When such being the factual position, there is no justification on the part of the revision petitioners in repeatedly filing Applications in one way or the other with an intention to protract the proceedings. Such being the intention, this Court should not entertain such practice. Therefore, the learned counsel prays for dismissal of this Revision Petition.

4. Heard the learned counsel appearing for the revision petitioner and the learned counsel for the second respondent.

5. I am unable to accept the contention of the learned counsel for the revision petitioner. Advocate Commissioner can be appointed only in the event of any genuine doubt arisen out of the issue and not otherwise. The terms "elucidating any matter in dispute" means that the Advocate Commissioner shall be appointed only to eradicate the doubt being arisen in the mind of the Court and not in the mind of the parties to the suit. The parties to the suit may have many doubts regarding the properties, and they may make an attempt to collect evidence in one way or the other to establish their case before the trial Court, but, for such purpose, the Court cannot be a party to assist them, and the Courts should be very cautious while appointing Advocate Commissioner, especially, to identify and note down the features of the property. Only in the event of doubt, the Court can go into the suggestion of appointment of an Advocate Commissioner, and the same cannot be done in a mechanical manner. The parties to the suit may raise several disputes during the course of the pleadings and arguments to the mind of the Court and the Court should decide whether such appointment of Advocate Commissioner is imminently required to resolve the dispute. In other words, if the Court deems that without the Advocate Commissioner, it would not be in a position to resolve the dispute, then, in that case, it may appoint Advocate Commissioner. Therefore,

complexity of the facts and circumstances of each case has to be taken into account for appointment of Advocate Commissioner. In the cases on hand, it is an admitted fact that earlier, pursuant to the application taken out by the first plaintiff, Advocate Commissioner was appointed, who also submitted a report. Further, it is admitted that the plaint 'B' schedule property is a strip of land, and he claims the same, by way of easementary rights. It is also an admitted by the revision petitioner that he has no title over the property and he claims access to reach the 200 feet inner right road. But, for such purpose, the Court cannot be used as a tool to collect evidence, when the parties are required to establish their case by adducing documentary evidence before the trial Court through full fledged trial. Considering the facts and circumstances of the case, this Court is not inclined to consider the grounds raised in these Civil Revision Petition.

6. For the reasons, stated hereinabove, this Civil Revision Petitions are dismissed, as being devoid of merits. Considering the facts and circumstances of the case, I do not find any illegality or perversity in the order passed by the trial Court. Accordingly, the orders passed in I.A.Nos.1723 & 1724 of 2013, in O.S.No.183 of 2002, dated 21.11.2013 are confirmed.

7. In the result, both the Civil Revision Petitions are dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

24.02.2017

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Index : Yes/no

To

The District Munsif Ambattur,

S.M.Subramaniam, J.,

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