

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.03.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.408 of 2013 and
MP.No.1 of 2013

Sambanda Mudaliar

...Petitioner

Vs

1. Gurusamy Chettiar @ Paul
2. Shanthi
3. Pavadai @ Kaliaperumal
...Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order of the District Munsif Court, Karaikal dated 27.06.2012 made in I.A.No.206 of 2012 in O.S.No.158 of 2008.

For Petitioner : Mr.S.Sounthar
For Respondents : Mr.R.Natarajan

ORDER

The petitioner filed a suit before the District Munsif, Karaikal in O.S.No.158 of 2008 for recovery of possession. The suit was contested by the respondents by filing written statement.

2. Before trial Court, the respondents filed an application in I.A.No.206 of 2012 for appointment of Advocate Commissioner to note down the physical features. The application was allowed by the trial Court notwithstanding the objection raised by the petitioner. Feeling aggrieved, the petitioner is before this Court.

3. The learned counsel for the petitioner contended that the suit itself is only in respect of a small extent admeasuring 20 feet South to North and 12 feet East to West. According to the learned counsel, the respondents proceeded as if the petitioner is in possession of 8 Are 30 Canthiar and on that basis wanted the trial Court to depute an Advocate Commissioner to inspect the property and submit a report. The learned counsel contended that being a suit for recovery of possession, there is no need to depute Advocate Commissioner at the instance of the defendants.

4. The learned counsel for the respondents, while justifying the order passed by the trial Court, contended that the petitioner raised a false claim with respect to the property in the possession of the respondents. According to the learned counsel, the respondents have already denied the title of the petitioner and as such, it is for the petitioner to prove that he is entitled to the property. The learned counsel contended that it was only to note down the physical features of the property, the respondents filed the application. Since the application was allowed by the trial Judge by exercising the discretion, the same is not liable to be interfered by this Court.

5. The suit in O.S.No.158 of 2008 was instituted by the petitioner. The petitioner claimed that on the strength of title deed, he is entitled to a decree for recovery of possession. The respondents denied the right claimed by the petitioner. Being a suit for recovery of possession, it is the bounden duty of

the petitioner to plead and prove that he is entitled to a decree in respect of the suit property. It is not as if the respondents are bound to prove the negative. There is no question of appointment of Advocate Commissioner at the instance of respondent to report about the physical features of the property in a suit filed by the petitioner in her capacity as plaintiff for recovery of possession. This aspect was not considered by the learned trial Judge. I am therefore, of the view that the impugned order is liable to be set aside.

6. In the result, the order dated 27 June 2012 is set aside. The interlocutory application in I.A.No.206 of 2012 is dismissed.

7. In the upshot, I allow the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed.

23.03.2017

gms

To

The District Munisif Court, Karaikal

K.K.SASIDHARAN, J.

gms

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