

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No.4288 of 2017
and
CMP.No.20176 of 2017

R.Matheswaran

.. Petitioner

Vs

R.Maniyarasu

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 16.08.2017 made in I.A.No.935 of 2016 in O.S.No.97 of 2016 on the file of the District Munsif, Rasipuram.

For Petitioner : Mr.M.Sivavarthanan

For Respondent : Mr.P. Valliappan

ORDER

This Civil Revision Petition is filed to set aside to set aside the order dated 16.08.2017 made in I.A.No.935 of 2016 in O.S.No.97 of 2016 on the file of the District Munsif, Rasipuram.

2. The learned counsel for the petitioner would submit that the respondent herein has filed a suit in O.S.No.97 of 2016 before the District Munsif Court, Rasipuram seeking for declaration and permanent injunction. In the aforesaid suit, the petitioner has filed an Interlocutory Application in I.A. No. 935 of 2016 under Order XXVI Rule 9 of CPC to appoint an Advocate Commissioner to note down the physical features of the properties and submit his report. The respondent filed his counter affidavit stating that the said application has been filed to gather evidence and relied upon the decision of this Court reported in 2012-5-LW-300. Hence, the court below dismissed the application. Challenging the said order, the petitioner has filed the present civil revision petition before this Court.

3. According to the petitioner, the purpose of appointment of Advocate Commissioner is to note down the physical features of the property and not as stated by the court below to gather evidence. Therefore, the order of the court below is liable to be set aside.

4. Per contra, the learned counsel for the respondent would

submit that the petitioner filed I.A. No.504 of 2017 requesting the court below to tag all the four suits in O.S.No.31 of 2010; O.S.No.179 of 2010; O.S.110 of 2011 and O.S. No.97 of 2016 and have a joint trial. As the court below dismissed the said application for joint trial, the petitioner filed a petition in CRP No.3354 of 2017 before this Court. However, on merits of the case, the court below has considered and passed orders in the said application. Apart from that, the petitioner has filed the instant application for appointment of Advocate Commissioner. The report has also been filed by the Advocate Commissioner. Therefore, the present revision petition is liable to be set aside.

5. Considered the submissions of the learned counsel for both the parties and perused the material available on record.

6. It is an admitted fact that the petitioner has filed O.S. NO. 31 of 2010 and in the said suit the petitioner has also filed an application in I.A. No.158 of 2010, wherein the court below has appointed an Advocate Commissioner and report has also been filed. Now, all the suits have been tagged together, for conducting joint trial.

Therefore, in the light of the orders passed by the court below, there is no warrant to interfere with the order dated 16.08.2017 passed in I.A.No.935 of 2016 in O.S.No.97 of 2016 by the District Munsif, Rasipuram.

7. Therefore, this Civil Revision Petition fails and the same is dismissed. Consequently, connected miscellaneous petition is closed.

No costs.

15.12.2017

Index : Yes/No

avr

To

The District Munsif Court, सत्यमेव जयते
Rasipuram.

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D.KRISHNAKUMAR,J.

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