



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.04.2017
(Reserved on 18.04.2017)

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CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP(PD) (MD) No.813 of 2017
and
CMP(MD) No.3640 of 2017

J Dr.P.K.Radhakrishnan ... Petitioner/Petitioner/Plaintiff
vs.

Rajesh ... Respondent/Respondent/Defendant

Petition filed under Article 227 of the Constitution of India, against the order passed in I.A.No.793 of 2016 in O.S.No.245 of 2016 dated 23.12.2016 on the file of the Principal District Munsif Court, Nagercoil.

For Petitioner : Mr.R.Manimaran

ORDER

The revision petitioner herein is the plaintiff in the suit filed for permanent injunction against the defendant and his men from disturbing his peaceful possession and enjoyment of the plaint schedule property which lay in S.Nos.379/4, 379/5 and 379/6 to an extent of 98 cents in Madhusoothanapuram Village, Agasteeswaram Taluk, Kanyakumari District.

2.Along with the plaint, the revision petitioner has filed the interlocutory application for appointment of Advocate Commissioner to note down the physical feature of the plaint schedule property and the adjoining area with the help of Taluk Surveyor, since the defendant is trying to damage the barbed wire fencing, stone pillars and boundary stone available in the plaint schedule property.

3.The Trial Court after hearing both sides has dismissed the I.A for appointment of Advocate Commissioner on the ground that if commission is issued, necessarily it will end in collection of evidence which is impermissible under law.

4.Aggrieved by the said impugned order, the present revision petition is filed.



5. Heard the learned counsel for the revision petitioner. Perused the pleadings and impugned order.

6. The specific case of the plaintiff is that he has purchased 98 cents of land under 3 sale deeds dated 17.01.1976, 26.11.1981 and 31.03.1985 respectively and in peaceful enjoyment of it. On the northern boundary, he has fenced his land. The land on all other three sides belong to him. So, he left the same without fencing. While so, the defendant attempted to destroy the iron barbed wire fencing and disturb his peaceful enjoyment. To substantiate this allegation, the plaintiff has sought for physical inspection of the property through the Advocate Commissioner.

7. The counter of the respondent/defendant in the interlocutory application reveals that, he claims title and possession over western portion of the suit property to an extent of 32.667 cents of land which lay in S.No.379/6 based on a settlement deed of the year 2015. The Trial Court taking note of the contentions in the counter has held that when the plaintiff claims possession over entire 98 cents, the defendant claims 32.667 cents on the western portion. So, the fact to be proved is whether the plaintiff is in possession of the entire 98 cents or not. For the said purpose, the inspection of the suit property by the Advocate Commissioner is not necessary.

8. The Trial Court has failed to appreciate the fact that the relief sought is permanent injunction with an averment that the barbed wire fencing on the northern boundary is likely to be damaged and forcibly altered. Fencing on the boundary is a strong indication of contiguous possession of the property. No doubt, the fact whether there is any fencing in the suit property or not, can be established by the parties through other means like photographs or videographs. But where the fence lies can only be ascertained by measuring the field with the help of qualified Surveyor. Further, the Trial Court has failed to see the admission of the respondent in his counter that there was dispute regarding removal of boundary stones found in S.No.379/6 for which request to revenue authorities was made by him to measure the same, but the said attempt was aborted by the revision petitioner.

9. Therefore, this Court is of the opinion that the Trial Court should re-appreciate the pleadings in proper perspective to arrive at a conclusion whether the inspection of the property and report on its physical features will elucidate any matter in dispute or otherwise.

10. In the result, this Civil Revision Petition is allowed. The impugned order dated 23.12.2016 passed in I.A.No.793/16 is set aside. The Trial Court is directed to hear I.A.No.793/16 afresh



and pass orders on merits. No costs. Consequently, connected miscellaneous petition is closed.

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/True Copy/

Sd/-

Assistant Registrar(CO)

Sub Assistant Registrar

To

The Principal District Munsif,
Nagercoil.

+1 cc to Mr.R.Manimaran, Advocate, SR.No. 53403

order made in
CRP(PD) (MD) No.813 of 2017
20.04.2017

nbi

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