



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.01.2017

CORAM:

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

C.R.P (MD) No.84 of 2017 (NPD)

and

C.M.P (MD) No.310 of 2017

K.Parimanam

.. Revision Petitioner/ Objector/
Third Party

Vs.

S.Alamelu Mangai

..Respondent/ Petitioner

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to allow the Civil Revision Petition and set aside the fair and decreetal order dated 25.10.2016 made in E.A.No.394 of 2016 in E.A.No.371 of 2016 in E.P.No.117 of 2016 in R.C.O.P.No.69 of 2015 on the file of the Hon'ble I Additional District Munsif of Tiruchirappalli.

For Petitioner : Mr. P.Arun Jayatram

For Respondent : Mr. J.Barathan

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order dated 25.10.2016 made in E.A.No.394 of 2016 in E.A.No.371 of 2016 in E.P.No.117 of 2016 in R.C.O.P.No.69 of 2015 on the file of the I Additional District Munsif, Tiruchirappalli.

2. The petitioner is the third party. Both the RCOP and EP filed by the respondent. The respondent filed RCOP against one Selvi for eviction on the ground of wilful default and owners occupation. In the RCOP eviction was ordered. The respondent filed Execution Petition in E.P.No.117 of 2016 to execute the order of eviction. In the Execution Petition, delivery was ordered. At that time the petitioner prevented and obstructed the Court Amin from taking delivery. The petitioner also filed E.A.No.371 of 2016 under Order 21 Rule 97 and Section 151 of CPC. The said petition is pending enquiry. While so, the petitioner filed E.A.No.394 of 2016 under Order 26 Rule 9 151 of CPC r/w. Section 18 A of the Tamil Nadu Building (Lease and Rent) Control Act for appointment of Advocate Commissioner to enquire the petition mentioned property with a direction to note down physical description of the property and to file a report on the ground that description of the property is not correct and it is vague.

3. The respondent filed counter affidavit and submitted that the petitioner filed suit in O.S.No.1340 of 2013 for injunction



against the respondent not to vacate him except due process of law. The respondent has described the property properly with specific four boundaries. The objection petition filed by the petitioner in E.A.No.371 of 2016 is pending enquiry. At this stage, the application for an appointment of Advocate Commissioner is not necessary as the property has been described properly and prayed for dismissal of the application.

4. The learned Judge considering the averments and counter affidavit and materials available on record dismissed the application holding that in the application filed by the petitioner in E.A.No. 371 of 2016 the petitioner has been examined as PW.1 and enquiry is pending. Further, the suit filed by the petitioner is pending and there is no vagueness in the description of the property given by the petitioner.

5. Against that order, present Civil Revision Petition has been filed.

6. The learned counsel appearing for the petitioner submitted that the respondent has not given proper description of the property. The learned Judge failed to consider the sketch filed by the petitioner and description of the property in O.S.No.1340 of 2013 in proper perspective and also the appointment of Advocate Commissioner is necessary to identify the property properly. He further submitted that when there is a dispute appointment of Advocate Commissioner is necessary. In support of his contention, he has relied on the Judgment reported in **2014-3-LW-178 (Anwar Batcha and another Vs. S. Mahuedoom)**.

7. The learned counsel appearing for caveator submitted that the respondent has given proper description of the property. Only for the property mentioned in the Execution Petition, delivery was ordered. There is no vagueness in the description of the property. The petitioner already filed O.S.No.1340 of 2013 and petition in E.A.No.371 of 2016 obstructing of delivery. The learned Judge has given valid reason for dismissal of application for appointment of Advocate Commissioner and hence, prayed for dismissal of this Civil Revision Petition.

8. I have heard the learned counsels appearing on either side and the materials available on record.

9. The petitioner has filed an application for appointment of Advocate Commissioner on the ground that the property mentioned in the delivery warrant is vague and has been wrongly described. This contention has been rightly rejected by the learned Judge. It is to be seen that the petitioner filed suit in O.S.No.1340 of 2013 giving specific boundaries and prayed that he should not be evicted except due process of law. He also filed E.A.No.371 of 2016 obstructing delivery of the property. The said petition is pending and he has been examined as PW.1. The learned Judge has taken note of the fact that the first respondent has given



specific boundary in the property which he entitled to take possession as per the order of eviction. The learned Judge has rightly held that there is no vagueness in the description of the property.

10. In such circumstances, there is no illegality or irregularity warranting interference by this Court and hence, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-I)

/TRUE COPY/

Sub Assistant Registrar

To

I Additional District Munsif,
Tiruchirappalli.

+1 cc to Mr.T.R.Jeyapalam, Advocate, SR.No:2654

trp
sva/jm/10.02.2017/3p/3c

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