



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2017

(Reserved on 01.11.2017)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (PD) (MD) No.967 of 2017

and

CMP (MD) No.4269 of 2017

Subbiah

... Petitioner

vs.

1) Periyannayagi

2) Manickam

... Respondents

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 03.02.2017 made in I.A.No.848 of 2016 in O.S.No.19 of 2014 on the file of the Learned District Munsif Court, Devakottai, and set aside the same and allow the present Civil Revision Petition.

For Petitioner : Mr.J.Anandkumar

ORDER

This revision petition has been filed against the fair and decreetal order dated 03.02.2017 made in I.A.No.848 of 2016 in O.S.No.19 of 2014 on the file of the learned District Munsif Court, Devakottai.

2. According to the learned counsel for the revision petitioner, the revision petitioner as plaintiff has filed a suit in O.S.No.19 of 2014 on the file of the learned District Munsif Court, Devakottai, praying for the relief of permanent injunction against the respondents herein and he also filed I.A.No.848/16 for appointment of Advocate Commissioner to inspect the suit property and to file a report and plan.

3. Counter affidavit has been filed by the respondents objecting to the appointment of Advocate Commissioner stating that the said I.A has been filed only to drag on the proceedings and also contended that the petitioner filed earlier application for appointment of Advocate Commissioner in I.A.No.778/15 and that I.A was dismissed.

4. Perusal of the records shows that this petitioner has filed CRP (MD) No.1696/16 against the dismissal of I.A.No.778/15 seeking appointment of advocate commissioner and by an elaborate order, this Court has dismissed the application by citing various



judgments and while disposing the said CRP, the learned Judge has held in paragraph 12 as follows:-

'12. In another decision in Chandrasekaran Vs. V. Doss Naidu reported in (2005) 3 M.L.J. 473, wherein, this Court in paragraphs 10, 21 and 22, has held as follows:

'10. Countering the arguments, learned counsel for the respondent has drawn the attention of the Court to the number of documents filed along with the plaint and has submitted that in the light of the documents filed by the plaintiff and the earlier litigation, the appointment of Advocate Commissioner is not warranted. It is further submitted that the factum of possession and age of the trees are the main issues to be determined by the Court in the suit and the same cannot be delegated to the Advocate Commissioner. He has further submitted that the factum of possession is to be proved by adducing evidence.

21. The power under Art. 227 of the constitution is to be exercised by the Court in its discretion and cannot be claimed as of right by any party. Under Art. 227 of the Constitution of India, the well settled position is:-

(1) The High Court's power to revision under Art. 227 of the Constitution would be restricted to interference in cases of grave dereliction of duty or flagrant violation of law, and would be exercised most sparingly, in cases where grave injustice would be done unless the Higher Court interferes. It cannot be used as appellate or revisional power.

(2) The Power would not be exercised to correct an error of fact or of law, not being an "error of law apparent on the face of the record", of an "irregularity or illegality of procedure" unless such error affects the jurisdiction, or involves a breach of the principles of natural justice; or to reappraise the evidence.

(3) Nor will the High Court, in exercise of this power, substitute its own judgment for that of the inferior court, whether on a question of fact, or of law or interfere with the intra vires exercise of a discretionary power, unless it is "arbitrary or capricious" or unless there was no evidence at all on which the inferior Court could have come to the conclusion it did, or there was error of finding on a jurisdictional fact". Whether the High Court found fault with the appellate court in declining to take into



consideration certain documents and took them on record, instead of substituting its opinion on the merits of the case, it should have remanded the matter back for the opinion of the appellate Court, it being the final Court of fact.(4)Nor can the High Court, nor being an appellate Court, pass an order of remand. In short, as regards findings of fact of the inferior Courts, the jurisdiction under Art.227 is limited to only examining whether the subordinate Court kept itself within the bounds of its authority in reaching the findings of fact. Consequently, the High Court cannot quash the judgment of the subordinate Court merely on the ground that its findings of fact were erroneous, but could do so only if the subordinate Court came to its conclusion without any evidence or upon a misreading of the evidence, or if its conclusions were perverse. There is nothing to suggest that the impugned order is perverse or in violation of law warranting interference under Art.227 of the Constitution of India.

22.Upon consideration of the facts and circumstances of the case, learned District Munsif has rightly declined to appoint Advocate Commissioner to note down the physical features and thereby elucidating the factum of possession. The impugned order does not suffer from any material irregularity. This revision petition has no merits and is bound to fail. ''

5.Applying the above decision, this Court found that there was no reason to interfere with the order passed by the Trial Court in I.A.No.778/2015 and accordingly dismissed CRP.1696/16. But, while dismissing the application, the learned Judge observed that it is open to the petitioner to file appropriate applications, if so advised and if it is permissible under law. Taking advantage of that observation, the present application has been filed by narrating the facts of the case. This Court even in its order dated 16.09.2016 in CRP.1696/16, has not given any liberty to the revision petitioner to file application for appointment of advocate commissioner and it is seen that the order dated 16.09.2016 has been passed dismissing the said CRP on merits and therefore, the present application in my considered opinion is barred by the principles of res judicata. As held by the learned Judge in the order dated 16.09.2016 made in CRP.1696/16, the petitioner cannot prove his possession by appointing advocate commissioner in an injunction suit and his possession can be proved only by letting in evidence. There is no dispute with regard to the sub division of Survey No.21 into 21/1 and 21/2 and there is also no dispute as to the boundaries.



6. Therefore, there is no infirmity in the order passed by the Court below. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The District Munsif,
Devakottai.

+1cc to Mr. J. Anandkumar, Advocate Sr. No. 91996

BALA

VB/SKN/RSK/SAR2/19/12/2017/4P/3C

order made in
CRP (PD) (MD) No. 967 of 2017
08.12.2017