

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.04.2018

Pronounced on : 27.06.2018

CORAM

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

C.R.P.(PD)No.1471 of 2018
and C.M.P.No.7848 of 2018

R.Jayavelu

...Petitioner

Versus

1. R.Ashok
2. R.Krishnaveni
3. R.Ramkumar
4. Kamakshi Ganapriya (@)
R.Kamatchi
5. V.Saraswathi

...Respondents

Prayer : Civil Revision Petition filed Under Article 227 of the Constitution of India to set aside the Order and Decreetal order dated 12.02.2018 made in I.A.No.12267 of 2017 in O.S.No.8236 of 2006 on the file of the learned III Assistant City Civil Court at Chennai.

For Appellant : Mr.R.Thiagarajan

For Respondents : Mr.K.V.Babu

ORDER

This Civil Revision Petition has been filed against the Order dated 12.02.2018 made in I.A.No.12267 of 2017 in O.S.No.8236 of 2006 on the file of the learned III Assistant City Civil Court at Chennai.

2. The first respondent filed a suit against the revision petitioner and other respondents in O.S.No.8236 of 2006 on the file of the City Civil Court at Chennai for delivery of possession and for damages. In the said suit, after completion of pleadings and framing of issues, trial was commenced and after completion of evidence on the side of the first respondent/plaintiff, during the course of evidence on the side of the revision petitioner/first defendant, after examination of two witnesses on the side of the defendants, the revision petitioner/first defendant filed an application in I.A.No.12267 of 2017 in O.S.No.8236 of 2006, under Order 26 Rule 9 of C.P.C., to appoint an Advocate Commissioner along with a Civil Engineer to conduct an enquiry and to file his report in respect of the value of the property. After filling of counter, the trial Court dismissed the application on the ground that no Advocate Commissioner need to be appointed for fixing the value. Felling aggrieved with the order passed by the trial Court, the revision petitioner/first defendant filed the present revision petition.

3. The learned counsel for the revision petitioner would submit that the first respondent/plaintiff has not correctly valued the suit property and not paid the proper Court fee. If correctly valued the suit property, the City Civil Court, Chennai has no jurisdiction to try the suit and also raised those pleadings in the additional written statement. The learned trial Judge has failed to consider the said contention and simply dismissed the application mechanically without any valid reason.

4. The learned counsel for the respondents would submit that no advocate commissioner need to be appointed for collecting the evidence. Hence, the trial court has rightly dismissed the said application and there is no reason to interfere with the order passed by the trial Court.

5. Heard rival submission made on either side and perused the records.

6. It is admitted that the first respondent filed suit against the revision petitioner and other respondents in O.S.No.8536 of 2006 on the file of the City Civil Court at Chennai and the suit is pending. At the time

of defence side evidence, the revision petitioner/first defendant filed an application to appoint an Advocate Commissioner to value the suit property with qualified Engineer.

7. On a perusal of records, it is seen that the plaintiff examined the Engineer for ascertaining the damages i.e, one of the relief sought for in the plaint. Though the plaint was presented on 20.09.2006 and the first defendant filed his written statement on 26.06.2007 itself, he has not raised those objections in the said written statement and he has filed an additional written statement on 17.12.2009, wherein in paragraph No.1 of the additional written statement, he has raised the objection that even the guide line value as per Government estimate, the market value of the site is Rs.5,930/- per sq.ft., and the value of the suit property comes to Rs.1,94,62,260/- for the site itself. Further, if the value of the construction upto the first floor is also taken into consideration, the trial Court has no pecuniary jurisdiction to try the case and the said jurisdiction issue has to be decided as preliminary issue. But there is no record to show that the issue has been framed regarding the pecuniary jurisdiction of the Court. The trail was commenced on 02.08.2011 and the plaintiff evidence was

completed on 06.09.2011 and D.W.1 filed her proof affidavit and cross examined on 16.11.2012 and finally she entered into witness box for cross-examination on 24.01.2013. At that stage, the revision petitioner/first defendant filed the application in I.A.No.12267 of 2017 in O.S.No.8236 for appointment of an Advocate Commissioner to conduct an enquiry to ascertain the value of the suit property. . When the revision petitioner has filed the written statement as early as on 20.06.2007, before the commencement of the trial, he would have filed an application before the trial Court to decide the issue regarding pecuniary jurisdiction as preliminary issue. But the revision petitioner/first defendant has not chosen to file any such application. Further, he has stated that as per the guide line value, the value of the property was fixed at Rs.1,94,62,260/- and the trial Court has no pecuniary jurisdiction, which can be very well established by oral and documentary evidence, that being the factual position the Advocate Commissioner need not to be appointed. Even assuming that, after establishing through evidence, if the trial Court comes to the conclusion that the trial Court has no pecuniary jurisdiction to proceed further and refers the case to the Court which has pecuniary jurisdiction. Under the said circumstances, this Court is of the view that the application filed by

P.VELMURUGAN, J.,

rts

the revision petitioner is highly belated and there is no illegality or irregularity in the order passed by the trial Court and there is no merits in the revision petition and it is liable to be dismissed.

8. With the above observations, the civil revision petition is dismissed. Consequently connected miscellaneous petition is also closed. No costs.

27.06.2018

Index :Yes/No

Internet :Yes/No

Speaking order/Non-speaking order

rts

To

The Presiding Officer,
VII Assistant Judge,
City Civil Court, Chennai

Pre-delivery Order in

C.R.P.(PD)No.1471 of 2018
and C.M.P.No.7848 of 2018