



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.02.2018
CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

WEB COPY

C.R.P. (PD) (MD) No.379 of 2018
in
C.M.P. (MD) No.1693 of 2018

P.M.Shahul Hameed :Petitioner / Respondent / Plaintiff

vs.

S.Jeyagopal :Respondent / Petitioner / Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.692 of 2017 in O.S.No.92 of 2017, dated 13.12.2017 on the file of the District Munsif Court, Tiruchendur.

For Petitioner : Mr.M.Kumar

ORDER

This Civil Revision Petition is filed against the fair and decreetal order passed in I.A.No.692 of 2017 in O.S.No.92 of 2017, dated 13.12.2017 on the file of the District Munsif Court, Tiruchendur.

2.The civil revision petitioner is the plaintiff in the suit in O.S.No.92 of 2017. The suit is for permanent injunction, restraining the defendant from interfering with the peaceful possession and enjoyment of the suit property, which is the southern wall of the plaintiff's property. It is the specific case of the plaintiff that the plaintiff is entitled to use 1 feet lane, which was on the further southern wall of the suit 1st schedule property. It is the further case of the plaintiff that the small lane on the southern side of his wall was in his enjoyment and used for maintaining and repairing the southern wall of his property. Since there were some construction to obstruct the plaintiff's enjoyment, over this lane, it is stated that the plaintiff was constrained to file a suit.

3.During the pendency of the suit, an Advocate Commissioner was appointed under Order 26 Rule 10(3) and Section 151 of C.P.C., for inspection of suit property and to file a report. Alleging that the Advocate Commissioner, earlier has not noted down certain important features, the defendant has filed I.A.No.692 of 2017, to



re-issue the warrant to the same Advocate Commissioner to note down certain physical features with the help of a qualified Surveyor.

4. In the affidavit filed in support of this petition, the defendant has categorically stated that the physical features would indicate that the defendant is in possession and enjoyment of the property. It is further stated that the suit property is being enjoyed by the defendant. It is also the case of the defendant that in the suit property, there are some permanent fixtures to indicate that the lane in question is in the exclusive enjoyment of the defendant. Alleging that the Advocate Commissioner, in his earlier report, has not mentioned the existence of certain permanent fixtures and other aspects, which are required for deciding the suit, the petition filed by the defendant was allowed by the trial Court and aggrieved over the same, the plaintiff has filed the above civil revision petition.

5. Having regard to the admitted facts and issues that arise for consideration in the suit, the petition to re-issue the warrant to the same Advocate Commissioner, for inspecting the suit property and to file a detail report, was allowed. Since the complaint is about the failure of the Advocate Commissioner to note down certain physical features, the plaintiff cannot object the petition. The Court below has granted relief by re-issuing the warrant to the same Advocate Commissioner to inspect the suit property along with assistance of qualified Surveyor. The lower Court has allowed the petition, after pointing out that the Advocate Commissioner has omitted some physical features and that the failure to mention about the existence of certain features will cause serious prejudice to the case of the defendant. Since the trial Court has understood the controversies, it has rightly appointed an Advocate Commissioner during the pendency of the suit. Since the complaint is about failure to note down certain features by Advocate Commissioner, which are available on ground, the petition for re-inspection has been allowed. In view of the same, this Court is not inclined to entertain this civil revision petition. The lower Court has only re-issued the warrant to the same Advocate Commissioner for noting down certain features, which are stated to be relevant and not found in the earlier Advocate Commissioner report. Hence, this civil revision petition is dismissed. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/



To

The District Munsif Judge,
Tiruchendur.

WEB COPY +1 cc TO Mr.H.Arumugam , Advocate in SR No. 50804

cmr

AE/GT/SAR2/19.03.2018/3P/4C

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