



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 30.08.2018
DELIVERED ON : 19.09.2018
CORAM
THE HONOURABLE MRS. JUSTICE R. THARANI

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C.R.P. (PD) (MD) No.194 of 2015
and
M.P. (MD) No.1 of 2015

Thangamuthu .. Petitioner/2nd Respondent/2nd Defendant

Vs.

1.Rethnaraj ...1st Respondent/Petitioner/Plaintiff
2.Rajan ...2nd Respondent/1st Respondent/1st Defendant
3.Brightlet ...3rd Respondent/3rd Respondent/3rd Defendant

Prayer : This Civil revision petition is filed under Article 227 of Constitution of India, to call for the records pertaining to the fair and decreetal order passed by learned Principal District Munsif, Padmanabhapuram in I.A.No.380 of 2013 in O.S.No.105 of 2013 dated 09.12.2014 and set aside the same.

For Petitioner : Mr.K.P.Narayanakumar
For Respondent No.1 : No Appearance
For Respondent No.2 : Mr.E.V.N.Siva
For Respondent No.3 : Exparte vide EB

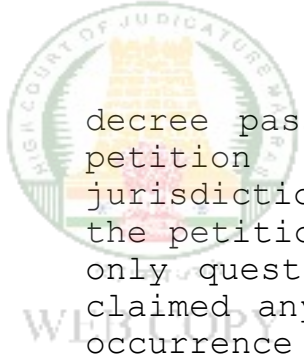
ORDER

Heard Mr.K.P.Narayanakumar, learned counsel appearing for the petitioner and Mr.E.V.N.Siva, learned counsel appearing for the second respondent.

2.This petition has been filed to set aside the fair and decreetal order passed by learned Principal District Munsif, Padmanabhapuram in I.A.No.380 of 2013 in O.S.No.105 of 2013 dated 09.12.2014

3.The petitioner is the second defendant in O.S.No.105 of 2013. The first respondent herein filed a suit against the petitioner and the second respondent for a prayer of declaration and injunction. The first respondent herein has filed a petition in I.A.No.380 of 2013 for appointment of a Commissioner for inspecting the suit property and to note down the damages caused to the Rubber trees and Banana trees and the petition was allowed by the trial Court. Against the order, the petitioner has filed this petition.

4.On the side of the petitioner, it is stated that the third respondent purchased the property through the Court as per the



decree passed in O.S.No.203 of 2011. The petitioner has filed a petition before the trial Court questioning the pecuniar jurisdiction of the trial Court. Even as per the statement given in the petition, all the trees are damaged on 25.06.2013 itself and the only question is relating to title. The first respondent has not claimed any damages. In the plaint, it is stated that the date of occurrence is on 20.05.2011, but in this petition the damages was said to have been caused on 25.06.2011. Already a partition suit was filed in O.S.No.119 of 2006 before the learned Principal District Munsif and preliminary decree was passed on 05.10.2010. No appeal is filed against the preliminary decree. The petitioner's wife lodged a complaint against the first respondent for damaging the house on 25.07.2011. After enquiry by the Deputy Superintendent of Police, this Interlocutory Application is filed with false allegations and the trial Court without going into the merits of the case has wrongly allowed the petition and hence, prayed to allow this revision petition.

5.On the side of the first respondent, it is stated that the property belonged to the grandfather of the first respondent and the grandfather has two sons and one of the sons, namely Valsalam Nadar had two wives and the first respondent and one Selvaraj are sons of Valsalam Nadar through his first wife. In the year 1963, this Valsalam Nadar and his father executed a settlement deed in favour of the male issues. The petitioner herein is trying to grab the property and the petitioner trespassed into the property and caused damages to the Rubber trees and Banana trees and hence, the appointment of the Commissioner to note down the damages and physical features are necessary.

6.On the side of the petitioner, it is stated that the suit is only for declaration and injunction. The third respondent is the sister of the first respondent. There is no dispute regarding identity of the property. There is no dispute regarding the boundaries of the property. The first respondent has not claimed any damages in the suit. A Commissioner to ascertain the trees that are cut in the suit property is not necessary as no fruitful result will be obtained by the appointment of the Commissioner.

7.The learned counsel appearing for the petitioner relied on the Judgment passed by the Calcutta High Court in the case of The Owners and Parties Interested in the Vessel M.V."Baltic Confidence" v. The State Trading Corporation reported in AIR 2000 Calcutta 91, which reads as follows:

"Dispute is relation to quantum of goods damaged- cannot be determined in an interlocutory application"

8.The learned counsel appearing for the petitioner relied on the Judgment passed by the Calcutta High Court in the case of Pushpaj and Others v. Chellan reported in 2004 4 L.W. 701, which reads as follows:



"this is nothing, but an attempt made by the plaintiff to create an evidence and the same is not permissible under the garb of appointing an Advocate Commissioner"

9. The learned counsel for the petitioner relied on the Judgment passed by this Court in the case of S. Saravanan v. Mahalakshmi @ G. Rohini reported in 2014 (3) MWN (Civil) 51, which reads as follows:

"Therefore, it is very clear that present petition for appointment of Advocate Commissioner has been made only to procure evidence as to who is in possession of property."

10. Records perused. It is seen that the petitioner has filed a petition in I.A.No.675 of 2013 regarding the jurisdiction of the trial Court. From the records, it is seen that the trial Court has already dismissed the petition. It is seen that on the basis of the settlement deed executed by Valsalam Nadar and one Brightlet, sale agreement is made in favour of the petitioner. The petitioner has filed a suit before the Sub Court, Padmanabhapuram in O.S.No.203 of 2011 for specific performance and he obtained the sale deed on 29.11.2013. The petitioner executed four sale deeds in favour of the third party. The trial Court has ordered for inspection of Commissioner to note down the physical features. The specific prayer stated in the petition in I.A.No.105 of 2013 was to note down the damages caused to the trees. It is stated that some Banana trees and Rubber trees are cut down by this petitioner. These trees are stated to have been cut down on 25.06.2013. Almost 5 years were over, there would not be any use in inspecting the trees especially Banana trees after the lapse of five years. The citations produced by the petitioner are applicable to this case. The case is not for damages. There is no dispute regarding the boundaries. Hence, there is no need for the Commissioner to visit the suit property. The appointment of the Commissioner will further delay the proceedings.

11. In the above circumstances, this Civil Revision Petition is allowed and the order passed by the lower Court is set aside. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-II)

To

The Principal District Munsif,
Padmanabhapuram.



+1CC to Mr.K.P.Narayanakumar, Advocate, SR.No.85571
+1CC to Mr.E.V.N.Siva, Advocate, SR.No. 86084

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