



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.01.2018
(Reserved on 07.11.2017)

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CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (PD) (MD) No.1685 of 2017

and

CMP (MD) No.9279 of 2017

E.Murugan ... Revision Petitioner/Petitioner/Defendant

vs.

T.Daniel ... Respondent/Respondent/Plaintiff

Petition filed under Article 227 of the Constitution of India, as against the fair and decreetal order dated 31.07.2017 passed in I.A.No.179 of 2017 in O.S.No.53 of 2011 on the file of the Additional District Munsif Court, Valliyoor, Tirunelveli District.

For Petitioner : Mr.V.Balasubramanian
For Respondent : Mr.A.Ajith Geethan

O R D E R

This Civil Revision Petition has been filed against the fair and decreetal order dated 31.07.2017 passed in I.A.No.179 of 2017 in O.S.53 of 2011 on the file of the Additional District Munsif Court, Valliyoor, Tirunelveli District.

2.Learned counsel for the petitioner would submit that the suit in O.S.No.53 of 2011 has been filed by the respondent/plaintiff against the revision petitioner/defendant for permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. In the said suit, the revision petitioner has filed I.A.No.179 of 2017 for appointment of Advocate Commissioner to measure the suit schedule property with the help of a Surveyor and to file a report and plan. The Court below dismissed the said petition, holding that when the respondent/plaintiff proves his case through the oral and documentary evidence, the revision petitioner/defendant can very well cross examine the witnesses and produce relevant documents to disprove the case of the plaintiff, for which, appointment of Advocate Commissioner is not necessary.



3. Learned counsel for the petitioner would further submit that the Trial court ought to have understood the case in proper perspective and allowed the application for appointment of Advocate Commissioner. It is further contended that the finding of the Court below that the plaintiff has to prove his own case is erroneous since it is also the duty of the defendant to prove his own case by adducing proper evidence to support his case. Further, when location and extent of the suit property is disputed, Commissioner ought to have been appointed for effectively adjudicating the dispute. In support of his contentions, learned counsel relied on the following judgments:-

(i) Sivagurunathan vs. Ramalingam reported in (2005) 3 MLJ 525.

(ii) Anwar Batcha vs. S. Mahuedoom reported in 2014 (5) CTC 85.

4. Per contra, learned counsel for the respondent would submit that there is no error in the order passed by the Trial Court and as rightly held by the Trial Court, the burden of proof is on the respondent/plaintiff to prove the plaint averments and therefore, appointment of advocate commissioner is not necessary. In support of his contentions, learned counsel for the respondent relied on the following judgments:-

(i) Kulanthai Ammal vs. K. Muruganantham (CRP(PD)(MD) No. 687 of 2015 dated 29.04.2015)

(ii) Lakshmi vs Seenimariam (CRP(PD) No. 2540 of 2015 dated 14.07.2015)

(iii) Chinnasamy and another vs. Krishnan and another (CRP(MD) No. 1020 of 2016 dated 06.06.2016)

(iv) Rajendran and another vs. M. Sakthi Subramani and 2 others (CRP(PD)(MD) No. 1525 of 2015 dated 30.11.2016)

(v) A. Govindaraj vs. Vedhapadasalai, Sikkal, represented by its Trustee Dr. N. Meenakshi Sundaram (CRP(NPD) No. 3948 of 2009 dated 10.12.2009)

(vi) Seerangayammal and 2 others vs. Marimuthu (CRP(PD) No. 3368 of 2013 dated 24.11.2015)

(vii) P. Philip vs. Anthony Viyagappan and 2 others (CRP(NPD)(MD) No. 466 of 2017 dated 16.03.2017)

5. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

6. Perusal of the records shows that the suit has been filed by the respondent/plaintiff against the revision petitioner/defendant for permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. Pending suit, the revision petitioner filed I.A. No. 179 of 2017 for appointment of Advocate Commissioner to measure the suit schedule property with the help of a Surveyor and to file a report and plan and the said petition was dismissed by the Trial Court holding that when the respondent/plaintiff proves his case through the



oral and documentary evidence, the revision petitioner/defendant can very well cross examine the witnesses and produce relevant documents to disprove the case of the plaintiff, for which, appointment of Advocate Commissioner is not necessary.

7. It is a settled law that burden of proof is on the plaintiff to establish his case by adducing oral and documentary evidence and the parties cannot collect evidence through the Advocate Commissioner. Further, the suit is for permanent injunction and therefore, the issue in the suit is with regard to possession of suit schedule property. It is also the settled legal position that Advocate Commissioner cannot give a finding with regard to possession of suit property. As rightly held by the Trial Court, it is for the plaintiff to prove his case and if the revision petitioner/defendant has any defence, he can put forth the same by letting in oral and documentary evidence to disprove the case of the plaintiff. The judgments relied on by the learned counsel for petitioner are not applicable to the present case and judgments relied on by the counsel for respondent lend support to the facts of this case. There is no infirmity in the impugned order passed by the Trial Court which does not need interference at the hands of this Court.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

The Additional District Munsif Court,
Valliyoor, Tirunelveli District.

+One cc to Mr.V.Balasubramanian, Advocate, SR.No.43029

+One cc to Mr.A.Ajith Geethan, Advocate, SR.No.42806

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