



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.2065 of 2017

and

C.M.P. (MD) No.10250 of 2017

Muthuramalingam : Petitioner/Petitioner/Plaintiff

vs.

1.Tamilarasan
2.Loganathan
3.Muthuraja
4.Muthuraj
5.Jamunarani
6.Muthuraman
7.Visalatchi

: Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 03.08.2017 passed in I.A.No.179 of 2017 in O.S.No.174 of 2013 on the file of the Principal District Munsif Court, Manamadurai.

For Petitioner : Ms.A.Banumathy

ORDER

This Civil Revision Petition has been filed to set aside the order passed by the learned Principal District Munsif, Manamadurai in I.A.No.179 of 2017 in O.S.No.174 of 2013 dated 03.08.2017.

2. The facts of the case are that the petitioner, as plaintiff, has filed a suit in O.S.No.174 of 2013, seeking the relief of declaration and permanent injunction. During the course of trial, the petitioner has filed an interlocutory application in I.A.No.179 of 2017 under Order 26 Rule 9 of the Code of Civil Procedure, seeking appointment of Advocate Commissioner. The trial Court, after hearing both the sides, has dismissed the said interlocutory application and challenging the same, the present civil revision petition came to be filed.

3. Heard the learned Counsel appearing for the petitioner and perused the documents placed on record. Notice to the respondents is dispensed with.

4. It is seen from the records that the petitioner had earlier filed I.A.No.305 of 2016 seeking appointment of Advocate



Commissioner to inspect the property in question and the same was dismissed on merits. A perusal of records would show that for the very same reasons and for the same cause of action, as in I.A.No.305 of 2015, the present interlocutory application in I.A.No.179 of 2017 was filed by the petitioner/plaintiff, i.e., it is nothing but a replica of the earlier one. Moreover, neither the petitioner/plaintiff nor the Counsel had whispered anything in the affidavit filed in support of I.A.No.179 of 2017, regarding the earlier Commissioner application and its dismissal as well as the change in circumstances.

5. Therefore, the learned Judge, strongly deprecated the attitude of the petitioner and his Counsel for misrepresenting/misleading the Court and dismissed the interlocutory application with costs.

6. Even in the affidavit filed in support of the present revision petition, the petitioner/plaintiff has not whispered anything, i.e., there is no averments regarding the earlier Commissioner application and its dismissal, but, instead, it is simply stated that the learned Judge has erroneously dismissed the petition without considering the facts and circumstances of the case.

7. In a suit for declaration as well as injunction, the plaintiff has to prove his possession only by letting in evidences. No doubt, in some exceptional cases, appointment of Advocate Commissioner is warranted. Also, it is not in dispute that a second application for appointment of Advocate Commissioner cannot be filed, but, this is a case where the attitude of the petitioner as well as his Counsel has to be considered.

8. It is clear that without any convincing or plausible reasons the second petition was filed, by suppressing the earlier one. Therefore, in my considered opinion, it is nothing but a abuse of the process of the Court and the learned Judge has rightly dismissed the petition and imposed costs, which deserves no interference from this Court.

9. In result, this Civil Revision Petition stands dismissed. Though this Court is inclined to impose heavy costs in this matter, no costs are imposed, but, the dissatisfaction of this Court is recorded so that such kind of act shall not repeat in future. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar



To
The Principal District Munsif,
Manamadurai.

+1CC to M/s.A.Banumathy, Advocate, SR.No. 50730

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