



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.01.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) No.86 of 2017 (PD)
and
C.M.P (MD) No.313 of 2017

Rajalakshmi ... Petitioner/Petitioner/1st Defendant

Vs.

Jeyabharathi ... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to pass an order setting aside the fair and decreetal order dated 05.11.2016 passed in I.A.No.220 of 2016 in O.S.No.28 of 2016 on the file of District Munsif Court, Theni, and allow the same.

For Petitioner : Mr.C.Jeganathan

For Respondent : Mr.N.Tamilmani

ORDER

This Civil Revision Petition has been filed challenging the order dated 05.11.2016 made in I.A.No.220 of 2016 in O.S.No.28 of 2016, on the file of District Munsif Court, Theni.

2. Heard the learned Counsel for the petitioner, learned Counsel for the respondent and perused the materials available on record.

3. The respondent /plaintiff has filed a suit in O.S.No.28 of 2016 seeking the relief of permanent injunction restraining the petitioner from in any way interfering with the peaceful possession and enjoyment of the property in so far as the land being used as a pathway in Survey No.1503/286 measuring an extent of 7.96 cents situated at Sakkaraiipatti, Veerapandi Village, Then District is concerned. Along with the suit he filed a petition in I.A.No.61 of 2016 for grant of interim injunction and the same was granted in his favour. In fact the said suit was filed mainly on the allegation that this petitioner/defendant has encroached in the property



belonging to the respondent/plaintiff.

4. The learned Counsel for the petitioner would submit that the said allegations are false and he would draw the attention of this Court to page No.6 of the typed set of papers, wherein, it has been mentioned that petitioner's land is comprised in survey No.1494/4A1 and the respondent/plaintiff's land is comprised in survey No.1503/2A6A and in between both the said lands, there exists a land comprised in Survey No.1503/4 belonging to third party one Murugan. Therefore, the question of encroachment by the petitioner does not arise.

5. He would further submit that the respondent has also no objection for appointing Advocate Commissioner. Despite the same, the learned Trial Judge dismissed the petition filed by the petitioner and hence, the present Civil Revision Petition is filed.

6. The learned Counsel for the respondent would submit that he was ready to get along with the suit and he did not have any objection and he was aware of the fact that the third party land is situated in between the petitioner and the respondent land.

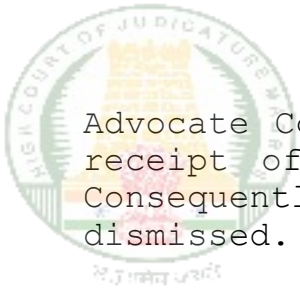
7. The learned Counsel for the petitioner would submit that there is a third party land situated in between the petitioner and respondent and hence, there is no question of encroachment. Therefore, he sought for appointment of advocate commissioner to measure the property and to elucidate the truth.

8. When the location of the property and extent is disputed, Commissioner ought to have been appointed for effectively adjudicating the dispute. The learned Counsel for the petitioner relied on the judgment reported in **(2005) 3 MLJ 525 in Sivagurunathan Vs. Ramalingam and others [CRP(PD) No.2177 of 2003 decided on 01.07.2005.]**.

9. In the present case, the encroachment itself is denied by the petitioner stating that a third party land is situated in between the petitioner and the respondent. For effectively adjudicating the dispute, appointment of advocate commissioner is necessary.

10. In my considered opinion, the learned Trial Judge ought to have allowed the application for appointment of Advocate Commissioner, since, the learned Counsel for the respondent did not have any objection to appoint an advocate commissioner. Therefore, to meet the ends of justice the order passed by the learned Trial Judge is set aside and the Civil Revision Petition is allowed without abutting the merits of the case

11. In the result, this Civil Revision Petition is allowed and the order passed by the learned Trial judge in I.A.No.220 2016 is set aside. The learned Trial Judge is directed to appoint an



Advocate Commissioner within a period of one week from the date of receipt of a copy of this order and proceed further. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

WEB COPY

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

The District Munsif,
District Munsif Court,
Theni.

+ 1 CC TO M/s.VEERA ASSOCIATES, IN SR No. 43416
+ 1 CC TO Mr.N.TAMILMANI, ADVOCATE IN SR No. 43861

RM

TE/JC/SAR-3 : 06/02/2018 : 3P/4C

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