



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2018

CORAM

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

CRP(PD) (MD) .No.1621 of 2016

and

C.M.P. (MD) No.7908 of 2016

M.Banumathi ... Petitioner/Respondent/Plaintiff

Vs.

1.Elangovan

2.Karunanithi

... Respondents/Petitioners/Defendants

2PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order passed in I.A.No.317 of 2015 in O.S.No.233 of 2014 dated 21.06.2016 on the file of the District Munsif Court, Pudukkottai.

For Petitioner : Mr.B.Chandran

For R2 : Mr.P.Jesu Balan Raja

O R D E R

The Civil Revision Petition has been filed to set aside the order passed in I.A.No.317 of 2015 in O.S.No.233 of 2014 dated 21.06.2016 on the file of the District Munsif Court, Pudukkottai.

2. I.A.No.317 of 2015 was filed by the respondents herein/ defendants under Order 26 Rules 8 and 10(b) C.P.C for appointment of Advocate Commissioner and the trial court allowed the petition. It is observed in the order of the trial court that the cases arose in respect of the same survey number and the Oak trees are loosing its value and considering the same, an Advocate Commissioner was appointed to measure the suit property, to cut the Oak trees and sell the same and after deducting the expenses, the amount is ordered to be deposited before the court. Against which, the present Civil Revision Petition is filed.

3. The learned counsel for the petitioner would submit that on earlier occasion, I.A.No.1027 of 2014 was filed by the respondents and the same was dismissed on the ground that the identity of the property, which was alleged to be purchased by the respondents, could be decided only in the trial. The learned counsel for the petitioner would submit that the respondents ought to have challenged the order of dismissal dated 25.11.2014 in I.A.No.1027 of 2014 before the appropriate forum, but the petitioner filed a fresh application and without considering the same, the court below has allowed the said petition.



4. The learned counsel appearing for the second respondent would submit that the trial court has rightly allowed the application and he prays for dismissal of this Civil Revision Petition.

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

6. On a perusal of records, it is seen that initially, I.A.No981 of 2014 was filed by the petitioner/plaintiff for temporary injunction and the said petition was dismissed. But the court below has ordered to maintain status quo. Till date, the order of status quo is in force. The respondents/defendants have filed I.A.No.1027 of 2014 for appointment of Advocate Commissioner, which was dismissed by the trial court. Thereafter, I.A.No.317 of 2015 was filed by the defendants for the same relief and the same was allowed by the trial court. In the considered opinion of this Court, since the order of status quo is in force, this court is inclined to interfere with the order of the trial court. Accordingly, the order passed in I.A.No.317 of 2015 in O.S.No.233 of 2014 dated 21.06.2016 on the file of the District Munsif Court, Pudukkottai, is set aside.

7. In the result, the Civil Revision Petition is allowed. No costs. Consequently, connected C.M.P.(MD) No. 7908 of 2018 is closed. Since the suit is of the year 2014, the trial court is directed to dispose of the suit in O.S.No.233 of 2014 within a period of six months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif, Pudukkottai.

2. The Record Keeper, (2 copies)

V.R.Section,

Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.P.Jesu Balan Raja, Advocate Sr.No.60592

+1cc to Mr.D.Parisuthanathan, Advocate Sr.No.60551

CM

VB/SV/MMS/SAR1/12.06.2018/2P/6C