



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.08.2018

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) .No.2278 of 2016 and
C.M.P. (MD)No.10494 of 2016

A.Krishnan

... Petitioner/Petitioner/ Defendant

Vs

1. Noorjakhan
2. Sirajudeen
3. Reykhanbanu

4. Kasinammal @ Benazir Banu ... Respondents/Respondents/
Plaintiffs

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in I.A. No.426 of 2016 in O.S.No.348 of 2011, dated 04.10.2016 on the file of the learned Additional District Munsif, Tenkasi and allow the Civil Revision petition.

For Petitioners : Mr.T.S.Mohamed Mohideen
For Respondents : Mr.M.P.Senthil

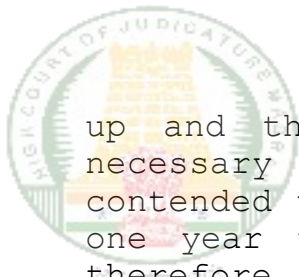
O R D E R

Respondents 1 to 4 herein instituted O.S.No.348 of 2011 on the file of the learned Additional District Munsif, Tenkasi, seeking the relief of declaration and permanent injunction.

2. The Revision petitioner is the sole defendant. The Revision petitioner filed I.A.No.426 of 2016 for appointment of Advocate Commissioner to note down the physical features of the suit property. The said application was dismissed by order dated 04.10.2016. The correctness of the said order is under challenge in this Civil Revision petition.

3. Heard the learned counsel on either side.

4. The learned counsel for Revision petitioner pointed out that as per the plaint, the suit property is a vacant site. But according to the Revision petitioner, a superstructure has been put



up and that therefore, to better elucidate the facts, it is necessary to appoint the Advocate Commissioner. He also strongly contended that the Court below erred in observing that it will take one year to get a report of the Advocate Commissioner and that therefore to avoid the delay, the application will have to be dismissed. He further contended that the Court below ought not to have held the Revision petitioner cannot take out the application for appointment of Advocate Commissioner.

5. I am unable to agree with the said submissions of the learned counsel for the Revision petitioner. As observed by the Court below and as rightly contended by the learned counsel for the plaintiffs/respondents herein, the suit was instituted way back in the year 2011 and if really the Revision petitioner had any real justification, he would have taken out an application under Order 26 Rule 9 of C.P.C., immediately after filing of the written statement. But this application was filed only in late 2016 by which time not only five years had elapsed, but P.W.1 as well as D.W.1 had been examined. Therefore, the Court below was justified in entertaining the impression that the application was filed only to drag on the proceedings.

6. More than anything else, the Revision petitioner is only the defendant in the suit. The entire onus and burden of proof lies only on the plaintiff. A reading of the affidavit filed in support of I.A. No.426 of 2016 gives an impression that the Revision petitioner wants to call for a report of the Advocate Commissioner in order to bolster his defence. The Court below was justified in discouraging such an endeavour. Therefore affirming the reasons assigned by the Court below and finding no merit in this Civil Revision petition, the Civil Revision petition stands dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar(CS-III)

To

1. The Additional District Munsif,
Tenkasi.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1cc to Mr.T.S.MOHAMED MOHIDHEEN, Advocate, SR.No. 78712

+1cc to Mr.M.P.SENTHIL, Advocate, SR.No. 78857

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