

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2019

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Civil Revision Petition No.124 of 2019

and C.M.P.No.1142 of 2019

K.Sivaraj

... Petitioner

-Vs-

1.A.K.Isreal Dharmaraj

2.K.Raghu

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the fair and decreetal order dated 12-09-2018 in C.M.P.No.252 of 2018 in A.S.No.106 of 2012 on the file of the VII Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.L.Dhamodharan

For Respondents: Ms.S.P.Arthi

O R D E R

This Civil Revision Petition has been filed against the fair and decreetal order dated 12-09-2018 in C.M.P.No.252 of 2018 in A.S.No.106 of 2012 on the file of the VII Additional Judge, City Civil Court, Chennai.

2. The petitioner / appellant filed the suit for declaration and possession in respect of the suit property, where the trial Court, after trying the suit, has dismissed the same as against which, A.S.No.106 of 2012 was filed by the plaintiff / appellant before the first Appellate Court, where, an application has been filed by the appellant under Order 26 Rule 9(3) of C.P.C., to summon the Advocate Commissioner for cross examination. In this regard, it is the case of the petitioner / appellant that, the report filed by the Advocate Commissioner before the trial Court in I.A.Nos.1866 of 2006 and 14184 of 2006 in O.S.No.4790 of 2002 has been completely relied upon by the trial Court and only on the strength of the findings given in the report of the Advocate Commissioner, the suit was dismissed against the plaintiff / appellant and therefore, in order to establish the case of the plaintiff / appellant before the first appellate Court, it

became necessitated for the appellant to summon the Advocate Commissioner for cross examination.

3. The said application, having been heard by the first appellate Court, has been dismissed, as against which the present Civil Revision Petition has been filed.

4. I have heard the learned counsel for the petitioner, who has extensively taken this Court through the Advocate Commissioner's initial and final report, filed before the trial Court, as well as the judgment and decree made by the trial Court and also the reasons given by the first appellate Court in rejecting the present application, which is impugned in the present revision.

5. By relying upon the said documents, the learned counsel for the petitioner would submit that, the learned Judge has rejected his application without going into the issue in proper perspective, as the trial Court passed the judgment and decree in favour of the defendant by dismissing the suit filed by the plaintiff, mainly relying upon the report of the Advocate Commissioner and therefore, unless and until the Advocate Commissioner, who filed the report, which highly influenced the decision making process of the trial Court, is cross examined, the purpose of the plaintiff to establish his title towards the suit property, would get defeated.

6. However, the learned counsel for the respondents / defendants would submit that, the trial Court decree makes it clear that, it is not on the basis of the Advocate Commissioner's report, but on the basis of the documents filed by both sides, which were marked as Exhibits, based on which the trial Court had come to the conclusion that the plaintiff / appellant was not entitled to the relief sought for.

7. In this regard, the learned counsel for the respondents relied on paragraph Nos.20 to 23 of the judgment of the trial Court, which reads thus,

" 20.The plaintiff version is that the location of suit property as per sale deed Ex.A1 that is Bhuvaneswari Lay out Plot No.175 exist only in the 3 acres of layout - laid by Muthukrishnan, but the plot No.175 does not exist in the 3 acres of lay out laid by the Muthukrishnan as per the Commissioner report and plan.

21. The boundaries found in the above such Ex.B16 and Ex.B4 sale deed are entirely different from the boundaries prevailing in Ex.A1 Sale Deed.

22. So the plaintiff as well as her vendors ought to have purchased the property without any proper verification. Ex.A4 layout plan is a false one, relying upon Ex.A4 layout plan, property would have been purchased by this plaintiff. So this plaintiff alone are claiming false right over the defendant property.

23. Herewith, the plaintiff who had approached this Court for damage and mandatory injunction had not proved and established his case by producing original documents, parental documents, original layout pertaining to the suit schedule property. Hence, issue Nos.1 to 7 are decided against the plaintiff."

8. By relying upon the said findings of the trial Court, the learned counsel for the respondents would submit that, the plaintiff, though filed a suit for declaration and possession of the suit property ie., Plot No.175, as he was not able to establish his case by proving his title by way of documents and was not able to compare the documents regarding schedule of property claimed to be the title of the plaintiff as well as parent documents, the trial Court had come to a reasonable conclusion that, there has been a difference between those two documents in respect of the schedule of the property and therefore, only on that strength, the trial Court passed the judgment in favour of the defendants, by dismissing the suit and not merely on the basis of the Advocate Commissioner's report.

9. I have considered the submissions made by the learned counsel appearing for both sides and perused the materials placed on record, especially the impugned order of the first appellate Court as well as the judgment of the trial Court.

10. Though it was claimed by the learned counsel for the petitioner / appellant that the trial Court has gone into the Advocate Commissioner's report and fully banking upon the said report only, had rejected the suit filed by the plaintiff / appellant and not based on the exhibits filed on behalf of the plaintiff, after having gone through the judgment of the trial Court, the fact remains that, the learned trial Judge, not only on the basis of the report submitted by the Advocate

Commissioner, but mainly on the basis of the document viz., Exhibit.A.1 Sale Deed, which is claimed to be the document / title supporting the case of the plaintiff, as if that he is the absolute owner of the property in question ie., Plot No.175, had decided the issue accordingly.

11. The learned Judge of the trial Court, in fact, has compared Ex.A1 as well as Ex.B16 and Ex.B4 and had given a finding that the boundaries given in these two Sale Deeds are differing and therefore, before purchasing the property in question under Ex.A1, the plaintiff ought to have verified the boundaries as well as schedule of the property, without which probably it has been purchased, hence he cannot claim the right of declaration and possession, as has been sought for in the plaint.

12. Though the said finding given by the trial Court is the subject matter before the first appellate Court, where it is open to the appellant to point out the defects in the impugned judgment before the first appellate Court and to establish his case, the documents filed on behalf of the plaintiff alone will speak and on banking all those documents, the plaintiff can lay his case and establish that he is entitled for the declaratory relief.

13. In the meanwhile, the Advocate Commissioner was appointed and he had given a report and that has also been taken into account by the trial Court while passing the judgment and decree. That will not ipso facto give the title to any of the parties, either in favour of the plaintiff, or in favour of the defendants, and the title to the suit property can be decided only on the basis of the documents produced by both the parties and the evidence adduced by them.

14. Those documents can very well be taken into account by the first appellate Court and therefore, absolutely there is no necessity to cross examine the Advocate Commissioner as it would be a wasteful exercise, and nothing would be elicited or extracted from the Advocate Commissioner in favour of either the plaintiff or in favour of the defendants. Therefore, this Court feels that the first appellate Court has rightly rejected the claim made by the appellant / petitioner to summon the Advocate Commissioner, and the impugned order cannot be said to be suffering from any infirmity and accordingly the same is to be sustained.

15. For all the aforesaid reasons, the Civil Revision Petition fails and the same is dismissed. No costs.

Consequently, connected miscellaneous petition is also dismissed.

16. It is submitted by the learned counsel for both sides that the respondents are senior citizens and therefore early disposal of the suit can give some respite to the parties. Considering the same, the first appellate Court is hereby directed to take up the suit and decide the same within the period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KST

To

VII Additional Judge, City Civil Court, Chennai.

Copy to:

The Section Officer,
V.R Section,
High Court, Madras

+1cc to Mr.L.Dhamodharan, Advocate sr.79924

+1cc to Ms.S.P.Arthi, Advocate sr.80087

C.R.P. No.124 of 2019

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nr 30/10/2019

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