

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P. NPD.No.2615 of 2012
and M.P.No.1 of 2012

Balasubramanian ... Petitioner

Vs.

Srinivasan ... Respondent

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the order and decretal order dated 19.06.2012 made in I.A.No.5/2012 in A.S.No.22/2011 on the file of the Court of the Addl. Subordinate Judge, Mayiladuthurai.

For Petitioner : Mr.T.P.Manoharan
Senior counsel for
Mr. K.P.Jotheeswaran

For Respondent : Mr.K.Goviganesan

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J U D G M E N T

The civil revision petition has been filed against the order of the First Appellate Court appointing the Commissioner to note down the physical features of the properties and to file a Report.

2. The brief facts leading to file this revision is as follows:

(i). The plaintiff has filed the suit for permanent injunction and restrain the defendants from interfering with the plaintiff's peaceful possession and lawful enjoyment of the suit properties. The properties has been given in the schedule with specific features. The plaintiff claimed a right over the properties on the basis of the settlement deed dated 25.04.2008.

(ii). The defendant denied the contention of the plaintiff and contented that the plaintiff has suppressed earlier two settlement deeds executed to the defendant in the year 2001 itself and the defendant was exclusively having the possession of the suit properties.

3. The trial Court after considering the evidence has dismissed the suit filed by the plaintiff. In the trial Court, it appears that the plaintiff has filed an application for appointment of Commissioner to note down the physical feature was dismissed by the Trial Court, against which, the CRP.No.4646 of 2010 is filed which was also dismissed during the pendency of the appeal. An application has been filed for appointment of Commissioner on the ground that physical feature and the measurement of properties to be note down by the Commissioner to enable the First Appellate Court to dispose of the appeal. The First Appellate Court has allowed the application and appointed the Commissioner.

4. Heard the learned senior counsel appearing for the petitioner and the learned counsel appearing for the respondent and also perused the materials available on record.

5. The learned counsel appearing for the revision petitioner contended that the suit was filed for bear injunction and there is no dispute with regard to the description of the suit properties having filed a similar application before the Trial Court to gather the evidence with

regard to the description of the properties. Hence, he submitted that the First Appellate Court appointing the Commissioner certainly amounts to gather evidence. Hence, the same is liable to be set aside. Further, he had relied on the judgments reported in 2002 (3) CTC 20, 2008 (5) CTC 181 and 2009 (3) CTC 597.

6. The learned counsel appearing for the respondent would contend that the Commissioner has been appointed only to note down the physical feature of the properties for enable the Appellate Court to arrive a just and proper conclusion. Hence, submitted that the order of the Trial Court does not need any interference.

7. I have perused the order of the First Appellate Court and appointment of Commissioner referred in the above suit which was filed for permanent injunction on claiming the right on the settlement deed dated 25.04.2008, whereas, the defendants claimed the title over the suit properties on the basis of two earlier settlement deeds. There is no discrepancy in the suit properties, in fact, the suit properties is a specific extent with specific boundaries as long as

there is no dispute with regard to the description of the properties namely the identity of the properties, this Court is of the view that appointing Commissioner to note down the physical feature does not arise at all.

8. The suit was filed for bare injunction and it is for the plaintiff to establish its possession to get a order of injunction as on the date of the suit, as long as there is no dispute with regard to the identity of the properties. The appointment of Commissioner did not warrant at all. It is also curious to note that in the trial Court itself, the plaintiff made an attempt to get the Commissioner appointed but it was dismissed and it has reached finality. Therefore, once again he cannot seek for an appointment of Commissioner for noting down the physical feature of the properties. The earlier order also passed and reached finality which is certainly binding on the plaintiff and in fact, it operate as *res judicata* and also estoppel. Hence, the First Appellate Court appointing the Commissioner in my view is against settled principles of law. Since the Commissioner cannot be appointed to collect the evidence of the parties, it is the suit for bare injunction, the plaintiff has to establish the case on the basis of his possession and also for title.

N. SATHISH KUMAR, J.

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9. In view of the above, the order of the First Appellate Court appointing the Commissioner is set aside. Accordingly, the Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

10. The Appellate Court is directed to dispose of the appeal within a period of three (3) months from the date of receipt of a copy of this order.

25.03.2019

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Index:Yes/No

Internet:Yes/No

Speaking order:Non-speaking order

To

The learned Addl. Subordinate Judge,
Mayiladuthurai

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