

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2019

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(PD) No.4346 of 2013
and M.P.No.1 of 2013

T.Balaraman ... Petitioner

Vs.

S.Inbasekaran ... Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of Constitution of India, against the order dated 11.10.2013 passed in I.A.No.5936 of 2013 in O.S.No.5115 of 2012 on the file of the XV Assistant Judge, City Civil Court, Chennai.

For Petitioner : M/s.K.Bijai Sundar

For Respondent : Mr.B.Namasivayam

ORDER

The instant Civil Revision Petition has been filed against the order dated 11.10.2013 passed in I.A.No.5936 of 2013 in O.S.No.5115 of 2012 on the file of the XV Assistant Judge, City Civil Court, Chennai.

2. The trial Court, by its order dated 11.10.2013, appointed a Commissioner to note down the physical features of the suit property. The suit is originally, filed for mandatory injunction directing the defendants to remove alleged construction over the suit property and he has also sought for a permanent injunction. However, an application filed by the plaintiff for an interim injunction has been rejected by the trial Court. Whereas, the trial Court has appointed a Commissioner to note down the physical features of the property, against which, the present revision has been filed.

3. The learned counsel appearing for the revision petitioner vehemently contended that since the trial Court has declined interim injunction noting that there is no pleading in the plaint and no reference given by the plaintiff as regard to the construction, however appointed Commissioner to gather evidence.

4. The learned counsel appearing for the respondent submitted that the Commissioner has also filed a report and the matter is

at trial stage and hence, the order of the trial Court does not require any interference.

5. Heard the learned counsel appearing on both sides and perused the materials placed before this Court.

6. Though the suit was originally filed for mandatory injunction and permanent injunction, the Commissioner has been appointed to note down the physical features of the property. Of course, the trial Court dismissed the application filed for interim injunction by holding that there is no proper pleading in the application and no reference also found in any of the documents at that stage. Merely because, the application for interim injunction was dismissed by the trial Court, it cannot be said by the revision petitioner that the Commissioner cannot be appointed to note down the physical features of the property. The trial Court has appointed the Commissioner only to note down the physical features and the trial Court has also taken into consideration other materials.

N. SATHISH KUMAR, J.

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7. Hence, I do not find any discrepancy or infirmity in the order dated 11.10.2013 passed in I.A.No.5936 of 2013 in O.S.No.5115 of 2012 by the trial Court and therefore, this Civil Revision Petition is dismissed. The trial Court is directed to dispose of the suit within a period of three (3) months from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

20.02.2019

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To

The XV Assistant Judge,
City Civil Court,
Chennai.

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