

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16.09.2019
CORAM
THE HONOURABLE MR. JUSTICE R.PONGIAPPAN
C.R.P.(PD)No.3959 of 2014
and
M.P.No.1 of 2014

Nagammal

.. Petitioner

vs.

1.Sujatha

2.K.Raveendranath

.. Respondents

PRAYER: Criminal Revision Petition filed under Article 227 of the Constitution of India, to call for the records and set aside the order dated 02.04.2014 passed in I.A.No.9 of 2014 in A.S.No.50 of 2012 on the file of the Learned Subordinate Judge, Poonamallee.

For Petitioner : Mr.Manoj Sreevalsan

For Respondents: No appearance

ORDER

Aggrieved over the order passed in I.A.No.9 of 2014 in A.S.No.50 of 2012 on the file of the learned Subordinate Judge, Poonamallee, the petitioner who is the appellant in A.S.No.50 of 2012, filed this Civil Revision Petition and prayed to set aside the order passed in I.A.No.9 of 2014. Consequently, he prayed to allow the application filed before the trial Court.

2.Initially, the appellant filed a suit in O.S.No.557 of 2003 and seeks the relief of permanent injunction restraining the defendants to intervene with the plaintiffs possession and enjoyment of the property. The learned Principal District Munsif, Poonamallee, by judgment and decree dated 19.04.2012 dismissed the suit by saying that the plaintiff has not proved his title and possession.

3.Aggrieved over the said finding, the petitioner herein filed an appeal in A.S.No.50 of 2012 on the file of the learned Subordinate Judge, Poonamallee and prayed to allow the appeal after setting aside the judgment and decree dated 19.04.2012

passed in O.S.No.557 of 2003. When the appeal is pending before the learned Subordinate Judge, Ponamallee, the petitioner herein filed an application in I.A.No.9 of 2014 and seeks the relief to appoint an Advocate Commissioner along with the Taluk Surveyor to measure the suit property but the Trial Court has considered the same not in favour of the petitioner. Aggrieved over the said findings the petitioner is before this Court with the present Civil Revision Petition.

4.Today, when this petition is came up for hearing, the learned counsel appearing for the petitioner would contend that on 30.07.2012 after disposal of the suit filed by the petitioner herein, the respondents making construction in their property and put up a sun shed over the compound wall. He has further added that the alleged 4 feet passage is not a common passage and it is the absolute property of the petitioner /plaintiff, however the findings arrived at by the trial Court is that the said 4 Feet passage is common to both plaintiff and defendant. If it is so, the respondents cannot make any construction in the said alleged 4 feet passage. Instead of that they attempted to construct a sun shed which obstruct the 4 feet common passage. Thereby, inorder to prove the same before the Appellate Court, appointment of an advocate commissioner is necessary.

5.In this regard, on going through the counter affidavit filed by the respondent before the first Appellate Court in Paragraph-5 he has admitted that the petitioner / appellant grew jealousy upon seeing his construction in first floor of the respondent property and is attempting to harass his construction by lodging false police complaint and this frivolous interlocutory application. Therefore, the said averments made in the counter affidavit filed by the respondent disclose the fact that the respondent / defendant now constructing the sun shed in the suit schedule property.

6.In the said circumstances, it is to be noted that as per the judgment rendered by the trial Court, the 4 feet passage is in existence is common to both the petitioner and the defendant. Since already there was a order as above, further construction by way of obstructing the 4 feet passage is nothing but against the judgment rendered by the Trial Court. If it is so, it is necessary for the plaintiff / petitioner to show the unauthorized construction before the appellate Court before making his submission. For showing the unauthorized construction, it is necessary to appoint an advocate commissioner as requested by the petitioner. But the lower Appellate Court did not go into the aspect of further construction, dismissed the petition filed by the petitioner.

Hence interference in the order passed by the Trial Court is necessary.

7. Therefore, for the reasons stated above, the order in I.A.No.9 of 2014 in A.S.No.50 of 2012 dated 02.04.2014 passed by the learned Subordinate Judge, Poonamallee, is set aside. The petition filed under Order 26 Rule 9 by the petitioner is allowed. The learned Subordinate Judge, Poonamallee is directed to appoint an advocate commissioner to measure the suit property along with the help of surveyor and after receiving the report the learned Subordinate Judge, Poonamallee, is directed to give an opportunity to the petitioner for marking the same as an exhibit and to dispose of the appeal in A.S.No.50 of 2012 within a period of three months since the appeal is pending from the year 2012.

8. Accordingly, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is also closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

pnn
To

1. The Principal District Munsif, Poonamallee.
2. The Subordinate Judge, Poonamallee.

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C.R.P. (PD) No. 3959 of 2014

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