

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.10.2019
CORAM
THE HON'BLE MR.JUSTICE R. SURESH KUMAR
C.R.P.No.3350 of 2019 and C.M.P.No.21792 of 2019

Thanikachalam

... Petitioner

-Vs-

1.Chandrakesan
2.Murthy
3.Sarasu

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against the fair and decreetal order dated 22.08.2019 made in I.A.No.516 of 2019 in O.S.No.843 of 2013 passed by the Principal District Munsif at Puducherry.

For Petitioner : Mr.V.Vadivelou

O R D E R

This revision has been filed against the fair and decreetal order dated 22.08.2019 made in I.A.No.516 of 2019 in O.S.No.843 of 2013 passed by the Principal District Munsif at Puducherry.

2. Before the trial Court, the plaintiff filed a suit for declaration and consequential injunction about the title of the suit property, where he filed the present I.A., to appoint an advocate commissioner to visit the suit property and to identify the location of the suit property with the help of documents filed by the parties, with the revenue records, with the help of qualified surveyor and to file a report with rough sketch.

3. The said application since has been dismissed after hearing both sides by the trial Court, through the impugned order, the petitioner, aggrieved over the same, has filed the present civil revision petition.

4. I have heard the learned counsel for the petitioner, who would submit that, the suit property originally belonged to the father of the petitioner and subsequently the petitioner, his brother and other legal heirs inherited the property and among themselves, according to the petitioner, there has been a partition on 09.10.1991. According to the said partition, four items mentioned in the schedule 'A' had been allotted to the petitioner / plaintiff and out of the 'A' schedule properties,

item No.3 is the suit property which is of an extent of 19 Kuzhies and 10 Veesams, out of the entire extent of 39 Kuzhies and 4 Veesams. The said 19 Kuzhies and 10 Veesams had been given by way of lease to the first respondent on an agreed rent and pursuant to the lease, of course which was given orally, the first respondent has been enjoying the property only as a tenant and not otherwise.

5. While that being so, it is the case of the petitioner / plaintiff that, since the first respondent and other respondents have denied the title of the plaintiff over the suit property and claim title by way of an alleged sale from the father of the plaintiff, in order to get the title declared and for a consequential injunction, the suit was laid before the Court below, where it became necessitated to appoint Advocate Commissioner to identify the suit property with available records and verify the physical features and file a report with a rough sketch, which may be helpful to the Court below to arrive at a conclusion with regard to the issues raised in the suit.

6. I have considered the submissions made by the learned counsel for the petitioner and also perused the materials placed before this Court.

7. As has been claimed by the learned counsel for the revision petitioner / plaintiff, the suit was laid by him for a declaration and injunction, mainly relying upon the partition deed dated 09.10.1991. The petitioner / plaintiff claimed title over the suit property for 19 Kuzhies and 10 Veesams and it is the definite case of the petitioner / plaintiff that the suit property has been given by way of lease to the respondents especially the first respondent. However, taking advantage of the possession by virtue of the oral lease between the petitioner and the first respondent, now the respondents / defendants have taken advantage to the extent of denying the title of the plaintiff over the property and that only triggered the petitioner / plaintiff to file the suit.

8. Therefore in the suit, the issue as to whether the petitioner / plaintiff is entitled to have a declaratory relief over the suit property can very well be decided and in this context, if at all the defendants want to set up a case that they claim title over the suit property based on any documents, including the alleged sale said to have been made between the father of the petitioner / plaintiff and the first respondent / defendant, the same should be proved only by the defendants and therefore, it is a matter of trial and only after full fledged

trial, the trial Court would decide who is having the title of the property and accordingly declaratory relief sought for by the revision petitioner / plaintiff would be decided by the trial Court and for the said purpose, assuming if an Advocate Commissioner is appointed and he files a report with regard to the possession of the suit property, that would no way help the trial Court to decide the title owner of the suit property.

9. In that view of the matter, this Court feels that the application filed by the revision petitioner, seeking appointment of Advocate Commissioner is unwarranted and therefore, the rejection of such application through the impugned order, in my considered opinion, is sustainable and it does not suffer from any infirmity.

10. In result, the Civil Revision Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

KST

To

Principal District Munsif at Puducherry.

C.R.P. No.3350 of 2019

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