



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 16.09.2019

CORAM

WEB COPY

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) .No.990 of 2011

and

M.P. (MD) .No.2 of 2011

Perumal Konar

... Petitioner/Plaintiff/Respondent

-Vs-

1.Sankarasubbu

2.Shanmugam

... Respondents/Defendants/Petitioners

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decretal order dated 08.04.2011 made in I.A.No.372 of 2009 in O.S.No.93 of 2007 on the file of the Principal District Munsif Court, Nanguneri.

For Petitioner : Mr.S.Siva Thilakar

For Respondents : Mr.H.Arumugam

O R D E R

The civil revision petition has been filed challenging the order of the learned Principal District Munsif, Nanguneri in I.A.No.372 of 2009 in O.S.No.93 of 2007, in and by which the learned Principal District Munsif, Nanguneri had appointed an Advocate Commissioner to note down the physical features of the suit property.

2. The revision petitioner, who is the plaintiff has filed the suit in question for a bare injunction restraining the defendants from destroying the existing ridges in the plaint schedule property. The plaintiff has contended that on 27.05.2007, there was an attempt to destroy the ridges and the ridges are in place for so many decades. This is the cause of action for instituting the above suit.



3. The respondents/defendants have filed their written statement in which, they have *inter alia* contending that they have never encroached or interfered with the plaintiff's possession of the suit property as described in the suit schedule and that allegations are totally false.

4. It appears that the trial had concluded in the above suit. The defendants have come forward with I.A.No.372 of 2009, seeking appointment of an Advocate Commissioner to note down the physical features of the suit property and submit a sketch to the effect. The said application came to be filed by the defendants, since an issue had been framed 'as to whether the ridges situated in the suit schedule property is correct in accordance with the survey extent'.

5. The plaintiff had opposed the said application by stating that the oral and documentary evidence let in so far are sufficient to arrive at a conclusion and there was no necessity for appointment of an Advocate Commissioner, which is nothing but an attempt to drag on the proceedings. The learned Principal District Munsif, Nanguneri after hearing both sides, by order dated 08.04.2011, was pleased to allow the said petition. The learned District Munsif had appointed an Advocate Commissioner to survey the suit schedule property with the help of the Surveyor. The learned District Munsif had issued a warrant to the Advocate Commissioner to find out whether there is ridges, whether it has been destroyed, whether it is arbitrary and to submit his report.

6. Heard the learned counsels on either side.

7. The suit in question is one for bare injunction and it is an axiomatic principle of law that in a suit for bare injunction, an Advocate Commissioner cannot be appointed for gathering evidence. In the instant case, the plaintiff has come forward with the case that the ridges are sought to be destroyed by the defendants and it is for the plaintiff to prove the same by letting in cogent evidence and the Advocate Commissioner's report cannot be used as a substitute for such evidence. That apart, it is seen that in the suit, trial had already concluded and the matter is posted for arguments. Therefore, the said application is highly belated. In the circumstances, the learned District Munsif has committed an error in allowing the application.

8. In the result, the Civil Revision Petition is allowed and the order passed by the learned Principal District Munsif, Nanguneri in I.A.No.372 of 2009, dated 08.04.2011 is set aside. Considering the fact that the trial has been concluded and the matter is now posted for arguments, the learned Principal District Munsif, Nanguneri is directed to dispose of the suit in O.S.No.93 of 2007



within a period of two months from the date of receipt of a copy of this order. However, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Cr1.Side)

// True Copy //

Sub Assistant Registrar(CS)

akv

To

The Principal District Munsif Court,
Nanguneri.

+1 CC to M/s.S.SIVA THILAKAR, Advocate SR-86996.

+1 CC to M/s.H.ARUMUGAM, Advocate SR-87112.

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