

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition (PD) No.1049 of 2012
and M.P.No.1 of 2012

Saravanakumar

..Petitioner

Vs

1.Ponnusamy

2.The Executive Officer,
Chinnavedampatty Town Panchayat,
Coimbatore.

3.The Tahsildar,
North Taluk,
Coimbatore.

.....respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to modify the fair and decreetal order dated 04.02.2008 passed by the learned III Additional District Munsif, Coimbatore in I.A.No.437 of 2007 in O.S.No.3878 of 2004 by directing the Advocate Commissioner to evacuate the earth in the petition property with the assistance of surveyor and file a report.

For Petitioner : Ms.Valliamma for Mr.M.Christopher
For Respondents : No Appearance

ORDER

None appeared on behalf of the respondents. Heard the learned counsel for the petitioner.

2. The case of the petitioner is that the 1st respondent filed a suit against the petitioner and others in O.S.No.3878 of 2004 on the file of the III Additional District Munsif, Coimbatore for bare injunction. In the said suit, the petitioner herein was shown as the first defendant. During the pendency of the suit, the petitioner herein filed an application in I.A.No.437 of 2007 for appointment of Advocate Commissioner to excavate the burial ground and also to find out decate and decomposed bones of the dead bodies underground and to note down the physical features of the suit property. That application was contested by the respondents and the trial Court allowed the application in part only to appoint the Advocate Commissioner to note down the physical features of the burial ground. Challenging the order of the Court below in regard to rejection of the prayer to excavate the burial ground by the Advocate Commissioner with the help of revenue officials, the petitioner has come forward with the present revision.

3. According to the petitioner/1st defendant, the respondent/plaintiff encroached the suit property which was meant as burial ground purely for the petitioner's community and therefore, if excavation is done by the Advocate Commissioner, real facts would come to light as bones of dead bodies will be unearthed which would show that the 1st respondent encroached the burial ground. However, it is pertinent to note that the respondent/plaintiff himself admitted in the plaint filed by him that a couple of dead bodies were buried in a portion of the suit property on the south east corner. Therefore, the trial Court has rightly observed that admitted facts need not required to be proved. However, as regards the issue that whether the suit property was used as burial ground or it is exclusively belonging to the respondent/plaintiff has to be decided in the suit based on the evidence being let in by both parties. Since the trial Court has clearly observed that the admitted facts need not be proved and for that purpose, the Advocate Commissioner need not be appointed for collecting evidence. Under these circumstances, the prayer sought for in the petition regarding excavation of the burial ground is concerned, the trial Court has rightly rejected while appointing the Advocate Commissioner only for the purpose of noting down the physical features, which, in the opinion of this Court, is in order and requires no interference. This Court does not find any perversity in the order passed by the trial Court.

P.VELMURUGAN,J.

Dn

Therefore, there is no merit in the revision, hence the revision petition is liable to be dismissed.

4. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

29.07.2020

dn

To

1. The III Additional District Munsif, Coimbatore
2. The Section Officer, V.R. Section, High Court, Madras

WEB COPY

Civil Revision Petition (PD) No.1049 of 2012