

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.10.2020

CORAM

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

**CRP (NPD) No.4247 of 2015
and
MP.No.1 of 2015**

R. Krishnasamy .. Petitioner/Appellant

vs.

1.R. Varadharajan
2.R. Jeganathan
3.N. Reena
4.N. Subapriya
5.N. Shrimath

.. Respondents/Respondents

PRAYER: The Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 12.08.2015 made in I.A.No.404 of 2013 in A.S.No.144 of 2013 on the file of the First Additional Sub-Court/1st Additional Sub Court, In-charge, Coimbatore.

For Petitioner ... Mr.N.Manokaran

For Respondents ... Mr.R. Meenakshi Sundaram(for R1)
No appearance (for R2, R3 & R5)

ORDER

This Civil Revision Petition has been filed by the petitioner / appellant against the dismissal of his application filed in I.A.No.404 of 2013 in A.S.No.144 of 2013 on the file of the I Additional Sub-Judge, Coimbatore dated 12.08.2015.

2. The first respondent herein had filed a suit in O.S.No.1195 of 2005 on the file of the District Munsif, Coimbatore, praying for declaration of title over the suit 'A' schedule property and for permanent injunction to restrain the defendants therein from interfering with his peaceful possession and enjoyment of the said property.

3. The learned District Munsif by the judgment and decree dated 23.04.2009 has decreed the said suit as prayed for without costs. Feeling aggrieved, the defendants had filed an appeal and the matter was remanded back after setting aside the judgment and decree passed by the learned District Munsif dated 23.04.2009. Thereafter, the learned District Munsif again had decreed the said suit as prayed for by the judgment and decree dated 02.08.2013. Feeling aggrieved,

the second defendant had filed an appeal in A.S.No.144 of 2013 on the file of the I Additional Sub-Judge, Coimbatore and also filed an application in I.A.No.404 of 2013 under Order 26 Rule 9 of CPC to appoint an Advocate Commissioner to note down the physical features of the suit property and file a report with plan. The learned I Additional Sub-Judge, Coimbatore by the order dated 12.08.2015 has dismissed the said application. Feeling aggrieved, the petitioner/appellant/second defendant has filed the present Civil Revision Petition.

4. Heard Mr.N.Manokaran, learned counsel for the petitioner and Mr.R. Meenakshi Sundaram, learned counsel for the first respondent.

5. Learned counsel for the petitioner has submitted that before remand, one Mrs.G.Kalavathi, when she was working as Principal District Munsif, Coimbatore, had passed a judgment in O.S.No.1195 of 2005 on 23.04.2009 decreeing the suit as prayed for. Aggrieved by the same, the second defendant had filed an appeal and the said appeal was allowed and the matter was remanded back to the trial court for fresh disposal and thereafter one Mr.N.Alagesan, who was working as Principal District Munsif, Coimbatore, had passed a

judgment decreeing the said suit. As against the same, the petitioner herein had filed an appeal in A.S.No.144 of 2013 on the file of the I Additional Sub-Judge, Coimbatore and also filed an application in I.A.No.404 of 2013 to appoint an Advocate Commissioner. He further submitted that in the meanwhile, the same Mrs.G.Kalavathi, who passed judgment and decree in the suit on 23.04.2009 got promotion and appointed as Sub-Judge at Coimbatore. He further submitted that the said Judicial Officer had dismissed the application in I.A.No.404 of 2013 in A.S.No.144 of 2013. He further submitted that since the said Judicial Officer had already passed a judgment in the suit, she should not have acted as appellate Judge in the same subject matter and therefore, he prayed to allow this Civil Revision Petition.

6. Per contra, the learned counsel for the first respondent for the plaintiff has submitted that there is no material to show that the said Judicial Officer had passed the impugned order after knowing the fact that she passed a judgment in the suit when she was working as District Munsif. He further submitted that the appeal is pending for more than 7 years and therefore, he prayed to direct the appellate court to dispose of the matter at early.

7. A perusal of the typed set of papers filed by the petitioner shows that one Mrs. G. Kalavathi, when she was working as Principal District Munsif, Coimbatore, had passed the judgment and decree in O.S.No.1195 of 2005 on 23.04.2009. As against the said judgment and decree, an appeal was filed and the matter was remanded back to the trial court for fresh disposal and thereafter, another Judicial Officer had passed a judgment and decree on 02.08.2013. Aggrieved by the same, the second defendant had filed an appeal in A.S.No.144 of 2013 on the file of the I Additional Sub-Judge, Coimbatore and also filed an application in I.A.No.404 of 2013 seeking appointment of an Advocate Commissioner. In the meanwhile, Mrs.G.Kalavathi was promoted and posted as Sub-Judge (Appellate Court Judge). When she was sitting as appellate court Judge, she has taken up the aforesaid application and dismissed the same. The same Judicial Officer cannot act as Trial Court Judge and also Appellate Court Judge. Therefore, the order passed in I.A.No.404 of 2013 in A.S.No.144 of 2013 has to be set aside and the matter has to be remitted back to the appellate court for fresh disposal.

8. In the result, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. The order passed by the learned I Additional Sub-Judge, Coimbatore, in I.A.No.404 of 2013 in A.S.No.144 of 2013 dated 12.08.2015 is set aside and the matter is remitted back to the appellate court for fresh disposal. Considering the fact that the aforesaid appeal is pending for the past 7 years, the Appellate Court is directed to dispose of the said application within a period of six weeks from the date of receipt of copy of this order. No costs.

12.10.2020

Index: Yes/No
Speaking/Non-speaking Order

gv

Note: Issue order copy on 15.10.2020.

To

The First Additional Sub-Court/1st Additional Sub Court,
In-charge, Coimbatore.

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P.RAJAMANICKAM., J.

gv



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