

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.03.2020

Coram

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP (PD) No.1078 of 2020 and

CMP No.5884 of 2020

Geethalakshmi

... Petitioner/Appellant

Vs.

1. Godhandapani

2. N.Kandhavadivel

... Respondents/Respondent

Prayer: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the Docket Order passed in A.S.No.13 of 2019 dated 10.02.2020 by the Subordinate Judge, Udumalpet.

For Petitioner : Mr.P.Srinivas

For Respondent : Mr.D.R.Arun Kumar (for R1 Caveator)

O R D E R

This Civil Revision Petition has been filed against the Docket Order passed in A.S.No.13 of 2019 dated 10.02.2020 by the Subordinate Judge, Udumalpet.

2. The petitioner herein is the 2nd defendant in the original suit in O.S.No.294 of 2014 on the file of the Subordinate Judge, Udumalpet and the first respondent herein has filed the above said suit for declaration of his title to the suit path way and also for consequential permanent injunction. Pending suit, the first respondent herein/plaintiff had filed an application in I.A.No.954 of 2014 to appoint an Advocate Commissioner to inspect the suit property and file a report with regard to the physical features of the suit property. Accordingly, the Trial court had appointed Advocate Commissioner and the Advocate Commissioner has also filed his Report. The petitioner herein/first defendant had filed her objection to the Commissioner's Report. Thereafter, the above said suit was decreed in favour of the plaintiff vide decree and judgment dated 27.04.2019. Challenging the above said decree and judgment, the petitioner herein filed an appeal suit in A.S.No.13 of 2019 before the Subordinate Judge, Udumalpet. In that appeal suit, the petitioner herein filed an application in I.A.No.246 of 2019 to pass an order of re-visit of the Advocate

Commissioner to measure the suit property and to file a report. In that application, the respondent herein also filed his counter affidavit. Thereafter, the Trial court on 10.02.2020, passed an order directing the counsel to argue the appeal and the commission application together in the next hearing on 24.02.2020. Challenging the above said order, this civil revision petition has been filed.

3. The learned counsel appearing for the respondent contended that, though the petitioner has filed her objection to the report filed by the Advocate Commissioner before the Trial Court, she has not filed any application seeking revisit of the Advocate Commissioner to inspect the suit property and to file a report with regard to the physical features of the suit property. Hence, the application seeking for order of revisit of the Advocate Commissioner to inspect the suit property in the appeal suit is not at all maintainable and hence, this civil revision petition is liable to be dismissed.

4. At this juncture it is relevant rely upon a decision rendered by this court in CRP No.533 of 2018 dated 13.02.2018, wherein, it is stated as follows.

" Admittedly, at the stage of the arguments, the revision petitioner has filed the present application. No explanation has been given by the revision petitioner for filing the above application at the stage of appeal suit. The court below has held that allowing the application would tantamount to collecting evidence. In the case of C.Panneer Selvam Vs. Padmaja reported in 2014 (1 NWN Civil P. 268, this court has held that at the part heard stage, Advocate Commissioner cannot be appointed to collect evidence in the suit for permanent injunction and the application to appoint an Advocate Commissioner to collect evidence cannot be accepted." In the present case, the revision petitioner has filed the instant application at the appellate stage without showing material reasons in the affidavit and hence, the said application cannot be entertained at the appellate stage. Therefore, for the aforesaid reasons, this court is not inclined to entertain the Civil Petition.

In fine, the Civil Revision Petition stands dismissed.

5. In the suit in O.S.No.54 of 2008, the Advocate Commissioner was appointed by the Trial Court to inspect the suit property and to file a report with regard to the physical features of the property. Subsequently, the suit was decreed in favour of the respondents and the petitioner herein filed an appeal before the first appellate court. Pending appeal, the filing of petition to issue an order of direction to the Advocate Commissioner, who was already appointed by the Trial Court, to re-visit the suit property and to file a report with regard to the physical features of the property, is not maintainable. As already stated, till the disposal of the suit, the petitioner has not filed any application seeking revisit of the Advocate Commissioner to inspect the suit property and to file a report with regard to the physical features of the suit property. It is also makes it clear that the first appellate court is having discretion power to determine the issues involved among the parties at the time of disposing the main appeal along with the commission application and accordingly, direct the petitioner to argue the main appeal and petition together, on the next hearing.

6. Inview of the above discussion and also in the light of the findings rendered by this court in CRP No.533 of 2018 dated 13.02.2018, this court do not find any perversity or infirmity in the orders passed by the first appellate court and hence, the same does not warrant any interference by this court. Therefore, this civil revision petition is liable to be dismissed, as it has no merits.

7. Accordingly, the civil revision petition is dismissed. No costs. The orders passed by the first appellate court is upheld.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

mst

To

The Subordinate Judge,
Udumalpet.

+1 cc to Mr.D.R.Arunkumar Advocate sr22347
+1 cc to Mr.P.Srinivas Advocate sr22414

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