

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 23.01.2020]

[ORDERS PRONOUNCED ON : 11.02.2020]

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.R.P.[PD] No.4987 of 2014

and

C.M.P.No.8081 of 2019

and

M.P.No.1 of 2014

V.Baskaran

... Petitioner/Plaintiff

.. Vs ..

1. S.B. Hemanadhan

2. Kirubasankar

3. Ramesh Babu

4. Sivapragasam

... Respondents/Defendants

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 19.08.2014 made in I.A.No.120 of 2013 in O.S.No.88 of 2010 on the file of the Additional Sub Judge at Puducherry.

For Petitioner : Ms.P.Veena
For RR-1 to 3 : No Appearance
For R-4 : M/s.Kurian & Associates
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ORDER

The revision petitioner herein is the plaintiff in O.S.No.88 of 2010.

2. The revision petitioner/plaintiff has filed the above said suit seeking for the relief of declaration and for injunction. The plaint proceeds on the basis that by virtue of registered Sale Deed dated 07.10.1992, the plaintiff claimed right, title and possession over the suit property. Since his peaceful possession of the property in the suit was disturbed by denying his title, he has filed the above said suit as against the respondents herein/defendants. The first respondent/first defendant has not only challenged the title and possession of the revision petitioner/plaintiff but also raised a dispute with regard to identity of the property in the suit. In the said suit, the revision petitioner herein/plaintiff has filed an application in I.A.No.120 of 2013 before the trial Court for appointment of an Advocate Commissioner to visit the property and to file a report. The respondents/defendants contested the said application stating that the said I.A.No.120 of 2013 was filed at the belated stage.

3. The trial Court, after hearing both the parties, had dismissed the said application by observing that the petitioner/plaintiff has not proved his case by filing documents to prove that the respondents/defendants have disputed the identity of the property. The trial Court has also observed that the above said application was filed only to drag on the proceedings. As against the order of dismissal passed by the trial Court, the present civil revision petition is filed before this Court.

4. Heard the learned counsel for the petitioner and the learned counsel appearing for the fourth respondent. There is no representation on behalf of respondents 1 to 3. This Court has perused the records.

5. On perusal of records, it appears that in respect of the very same property, a suit in O.S.No.240 of 2008 was filed for permanent injunction and interlocutory applications were also filed therein. The revision petitioner herein/plaintiff has filed a petition before this Court in C.M.P.No.8081 of 2019 praying to receive the affidavit and petition in I.A.No.454 of 2017 in O.S.No.240 of 2008 and

plaint in O.S.No.240 of 2008 on the file of the II Additional District Munsif Court, Pondicherry, as additional documents. The said C.M.P.No.8081 of 2019 is required for adjudication and hence, the same is allowed.

6. The revision petitioner/plaintiff has filed the above said suit for declaration of title and for permanent injunction. In the written statement filed by the second respondent herein/second defendant, it is stated that the property purchased by the revision petitioner/plaintiff is different from the property sought to be claimed by him. The revision petitioner/plaintiff did not take possession of the property claimed by him nor purchased the same. The question of the revision petitioner/plaintiff in possession of the property claimed by him and the threat for the same by the defendants is figment or imagination. Thus, this Court finds that the identity of the suit property was challenged by the second respondent herein/second defendant and hence, the revision petitioner/plaintiff has filed the application in I.A.No.120 of 2013 for appointment of Advocate Commissioner to measure the property with the help of a surveyor.

7. On perusal of the records, it is seen that after filing the written statement, issues have been framed and petition has been filed immediately even before the commencement of the trial and therefore, it is not a belated stage. Since the second defendant has disputed the identity of the property in the written statement, for better adjudication, it is necessary to appoint an Advocate Commissioner for measuring the property with the help of a surveyor.

8. In this view of the matter, this Civil Revision Petition is allowed and the order dated 19.08.2014 passed by the learned Additional Sub Judge, Puducherry, in I.A.No.120 of 2013 in O.S.No.88 of 2010 is set aside. The trial Court is directed to appoint an Advocate Commissioner within a period of two weeks from the date of receipt of a copy of this order. The Advocate Commissioner so appointed is directed to inspect the property and file a report within a period of twelve weeks thereafter. No costs. The connected M.P.No.1 of 2014 is closed.

11.02.2020

Internet :Yes
Jrl

RMT.TEEKAA RAMAN, J.

Jrl

To

The Additional Sub Judge,
Puducherry.



Order made in
C.R.P.[PD] No.4987 of 2014

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