

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition (PD) No.3520 of 2017

1.Vittobai
2.M.Vasanthi
2.Kumaresan

Petitioners

Vs

K.Kanniappan

Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India against fair and decreetal order dated 02.08.2017 in I.A.No.5589/2017 in O.S.No.1944/2017 on the file of XVth Assistant Judge, City Civil Court, Chennai.

For Petitioners : Mr.P.Anbazhagan

For Respondent : Mr.N.Sankaravadivel

ORDER

This Civil Revision Petition has been filed against the order dated 02.08.2017 made in I.A.No.5589/2017 in O.S.No.1944/2017 on the file of XVth Assistant Judge, City Civil Court, Chennai.

2. The respondent filed a suit against the petitioners for permanent injunction and mandatory injunction in O.S.No.1944/2017. During the pendency of the suit, he filed an application in I.A.No.5589/2017 for appointment of Advocate Commissioner with the help of surveyor to note down the physical features of the suit property to ascertain whether the respondent/defendant put up a wall and room in the eastern side of the suit schedule property and that petition was allowed. Challenging the same, the respondents in that application i.e., the petitioners herein have filed the present Revision before this Court.

3. When the matter was taken up on 06.07.2020, none appeared on behalf of the petitioner and therefore the matter was directed to be listed on 13.07.2020. Even today, there is no representation on behalf of the petitioner.

4. Heard the learned counsel for the respondent.

5. The learned counsel for the respondent submitted that he had already filed a suit in O.S.No.6556 of 2012 on the file of the 13th Assistant Judge, City Civil Court and got a decree in his favour. In that suit itself, the respondent sought for permanent injunction restraining the petitioners/defendants from interfering with the peaceful possession and enjoyment of the respondent/plaintiff in respect of the suit property and to put up construction in the suit property. But the petitioners herein encroached the property and put up the construction. Therefore, the respondent filed another suit for permanent injunction and also for mandatory injunction. During the pendency of the suit, he filed an application for appointment of Advocate Commissioner with the help of surveyor to note down the physical features of the suit property to ascertain whether the respondent/defendant put up a wall and room in the eastern side of the suit schedule property. The trial Court after elaborate discussions, allowed the application. Challenging the same the present Civil Revision Petition has been filed.

6. Admittedly the respondent filed a suit in O.S.No.6556 on the file of City Civil Court, Chennai and the same was decreed on 07.01.2015.

Subsequently he filed the present suit in O.S.No.1944/2017 before the XV Assistant Judge, City Civil Court and pending the same, he filed the petition in I.A.No.5589 of 2017 seeking appointment of Advocate Commissioner and the same was allowed.

7. The respondent/plaintiff filed the suit for bare injunction and also for mandatory injunction. Even in the earlier suit, the averment of the respondent is that the petitioners have encroached the property and put up construction and therefore he filed suit for bare injunction and mandatory injunction and pending the same the respondent has filed an application for appointment of Advocate Commissioner with the help of surveyor to note down the physical features of the suit property to ascertain whether the respondent/defendant put up a wall and room in the eastern side of the suit schedule property.

8. It is well settled principle of law that in a suit for bare injunction, appointment of Advocate Commissioner cannot be ordered either to prove the possession or collect the evidence. Therefore, under these circumstances, considering the facts and circumstances of the case, following the well settled proposition of law laid down by the Honourable Apex Court and this Court in

various decisions to the effect that Advocate-Commissioner cannot be appointed for making an enquiry about factum of possession of the property in dispute, this Court is of the view that the trial Court failed to consider this aspect and hence this Court finds that there is perversity in the order passed by the trial court.

In the result, this Civil Revision Petition is allowed. The order passed by the learned XV Assistant Judge, City Civil Court dated 02.08.2017 in I.A.No.5589 of 2017 is set aside. No costs.

13.07.2020

arr/nvsri

To

1. The XVth Assistant Judge, City Civil Court, Chennai.
2. The Section Officer, V.R. Section, High Court, Madras

C.R.P.(PD).No.3520 of 2017

P.VELMURUGAN,J.

arr



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