

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 3042 of 2018
and
C.M.P.No. 17986 of 2018

R.Palanivel

...Petitioner

Vs.

Thirumeni

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.1394 of 2015 in O.S.No. 91 of 2003 dated 10.11.2016 by the learned District Munsif Court, Panruti.

For Petitioner : Mr.P.Suresh Babu

For Respondent : No Appearance

O R D E R

The petitioner who had filed a suit for declaration of his title and injunction in O.S.No. 91 of 2003 challenges the order made in I.A.No.1394 of 2015 seeking appointment of Advocate Commissioner to inspect the property and file a report.

2. According to the petitioner, the respondent had trespassed into the property and cut down 15 cashewnut trees causing loss of more than Rs.50,000/- to him. It is also claimed that the respondent is claiming that he would interfere with the petitioner's possession and put up a fence. He would therefore seek the Court's assistance in appointing a Commissioner to note down the number of trees cut as well as the physical features of the suit property.

3. This was resisted by the respondent contending that the application is a device to prolong the suit. The suit is of the year 2003 and it was already delayed because of an application for amendment, which was filed by the petitioner. It is also stated that the application is only an attempt to create evidence. The Trial Court, upon hearing the parties concluded that the application itself is not maintainable and the learned Trial Judge held that the application is only an attempt to prolong the suit. The learned Trial Judge also took note of the

fact that there is no prayer for damages in the suit therefore, the application is an attempt to create evidence for making a prayer for damages in future. On the above findings, the learned Trial Judge dismissed the application. Aggrieved, the petitioner has come up with this civil revision petition.

4. I have heard Mr.P.Suresh Babu, learned counsel for the petitioner. Respondent though served, is not appearing either in person or through counsel, duly instructed.

5. Mr.P.Suresh Babu would contend that the learned Trial Judge was not right in dismissing the application for Commissioner, more so, only on the ground of delay. He would submit that the appointment of Commissioner is very much required to prove that the respondent has cut away the cashewnut trees in the suit property and thereby caused damages. I am unable to concur with the submissions of the learned counsel for the petitioner. The suit is one for declaration and permanent injunction, it is for the plaintiff / petitioner to prove his title and his possession on the date of the suit. He has not added any prayer for award of the damages on the ground that the defendant has cut away the trees, therefore, the damages said to have been caused to him because of cutting of their trees by the respondents, which is stoutly denied, cannot be a ground for an appointment of Commissioner. As rightly pointed out by the learned Trial Judge, this application is nothing but an attempt to procure evidence for impending claim for damages.

6. Hence, I do not see any merits in this civil revision petition. Therefore, this civil revision petition fails and it is accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To:

The learned District Munsif Court,
Panruti.

Mp(co)

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