



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.09.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (NPD) (MD)No.742 of 2019

K.Raju

: Petitioner

.. Vs ..

Potti Natarajan @ Natarajan

: Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to direct the learned Subordinate Judge, Srivilliputhur, Virudhunagar District to take the file in Docket Order, dated 05.04.2017 in A.No.2000 to number the unnumbered I.A.No. of 2017 in C.M.A.No.3 of 2011 on the file of the Honourable Subordinate Court, Srivilliputhur, Virudhunagar District and to decide the same in accordance with law.

For Petitioner

:Mr.A.Haja Mohideen

ORDER

This Civil Revision Petition is directed against the Docket Order, dated 05.04.2017 in A.No.2000 to number the unnumbered I.A.No. of 2017 in C.M.A.No.3 of 2011 passed by the learned Subordinate Judge, Srivilliputhur, Virudhunagar District.

2.Heard the learned Counsel appearing for the revision petitioner.

3.Brief facts that are necessary for the disposal of this revision petition are as follows:

4.The revision petitioner is the plaintiff in the suit in O.S.No.14 of 2003 on the file of the Principal District Munsif Court, Srivilliputhur. The said suit is for recovery of possession and for future mesne profits. During the pendency of the suit, the revision petitioner filed a petition in I.A.No.1853 of 2010 in O.S.No.14 of 2003 for appointment of Advocate Commissioner to note down the physical features and to submit a report. The said petition was originally, by order, dated 04.02.2011 allowed on condition that the revision petitioner/plaintiff should pay a sum of Rs.1500/- as Commissioner's remuneration on or before 21.02.2011. However, the revision petitioner did not pay the amount and hence, the learned Principal District Munsif, Srivilliputhur, by order, dated 20.04.2011, dismissed the petition in I.A.No.1853 of 2010 in O.S.No.14 of 2003 on the ground that the Commissioner's fees was not paid by the plaintiff.



5.As against the order dismissing the petition in I.A.No.1853 of 2011 for non payment of remuneration to the Advocate Commissioner, the revision petitioner filed an appeal in C.M.A.No.3 of 2011. The appeal memorandum filed by the revision petitioner was returned by learned Subordinate Judge, Srivilliputhur, Virudhunagar District, raising a query as to the maintainability of the appeal. In the return order, the learned Subordinate Judge, Srivilliputhur, Virudhunagar District, has pointed out that the Civil Miscellaneous Appeal will not lie. Aggrieved by the order returning the appeal memorandum, the present revision petition is filed.

6.The order challenged by the revision petitioner before the appellate Court is an order passed in an interim application filed by him before the trial Court dismissing the petition for appointment of Advocate Commissioner. An appeal challenging the said order cannot be maintained before the appellate Court and hence, the lower appellate Court is perfectly right in returning the appeal memorandum. No provision in Civil Procedure Code is brought to the notice of this Court providing appeal as against the order.

7.As a result, this revision petition is dismissed by confirming the Docket Order, dated 05.04.2017 in A.No.2000 in unnumbered I.A.No. of 2017 in C.M.A.No.3 of 2011 passed by the learned Subordinate Judge, Srivilliputhur, Virudhunagar District. No costs.

Sd/-

Assistant Registrar (writs)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

- 1.The Subordinate Judge, Srivilliputhur, Virudhunagar District.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.

C.R.P. (NPD) (MD) No.742 of 2019
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VR (CO)

KB (24.09.2020) 2P 3C