



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.03.2020
PRONOUNCED ON : 23.12.2020

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CORAM:
THE HONOURABLE MR.JUSTICE B. PUGALENDHI

C.R.P (PD) (MD)No.550 of 2014

P.T.Senthilkumar

... Petitioner / Respondent/
Plaintiff

Vs.

1.Dhanabakkiyam
2.Veerakumar

... Respondents/Petitioners/
Defendants

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 27.11.2013 made in I.A.No.11178 of 2013 in O.S.No.88 of 2010 on the file of the Additional District Munsif Court, Karur.

For Petitioner : Mr.S.Gokulraj

For Respondents : Mr.M.Karthikeyaga Venkatachalapathy

ORDER

This Civil Revision Petition has been filed by the plaintiff as against the fair and decreetal order dated 27.11.2013 in I.A.No.1178 of 2013 in O.S.No.88 of 2010 on the file of the Additional District Munsif Court, Karur.

2.The suit was filed by the petitioner/plaintiff for a relief of permanent injunction with regard to the suit property and the defendant has filed the present petition in I.A.No.1178 of 2013 under Order 26 Rule 9 and Section 151 of CPC to reissue the commission warrant to the Commissioner to inspect the suit property and the properties of the first defendant and moreover, measure the same with the help of the Surveyor and to submit his report.

3.It is the case of the respondents / defendants that a portion of the property has been encroached by the plaintiff and he had put up construction therein and already a Commissioner was also appointed in the suit, to take measurement of the properties of the respondents/defendants and the petitioner/plaintiff. But



the said Commissioner inspected the suit properties without any assistance of the Surveyor and therefore, it has be re-measured with the assistance of the Surveyor. Without the assistance of the Surveyor, it is not possible to ascertain the extent of encroachment and therefore, the defendants filed an application to reissue the Commission Warrant to the same Commissioner to inspect the suit properties and to measure the same with the help of the Surveyor and to submit his Additional Report and plan.

4.The learned Additional District Munsif, Karur by his order dated 27.11.2013, allowed the interlocutory application and aggrieved over the same, the present revision petition has been filed.

5.Heard Mr.S.Gokulraj, learned Counsel for the petitioner and Mr.M.Karthikeya Venkatachalapathy, learned Counsel for the respondents.

6.According to the petitioner /plaintiff, the suit in O.S.No.88 of 2010 has been filed only for a bare injunction and it has to be decided based on the documents in favour of the respondents/defendants, but the defendants have not produced any document to prove the title over the property and the Commissioner was already appointed and he has also inspected the property and filed his report a long back. The defendant has not made any objection to the report of the Commissioner and this interlocutory application is filed, after completion of the plaintiff's side evidence and after examination of DW1, only to drag the proceedings. Further, this application has been filed with averments that a portion of the property has been encroached and for the purpose of re-measuring the alleged encroachment, an application for appointment of Commissioner has been filed and for this purpose, the Commissioner warrant cannot be re-issued and in fact the defendants have admitted the title and the ownership of the plaintiff in the suit property. Therefore, the learned Counsel for the petitioner prayed that this petition be allowed and the order of the learned District Munsif, Karur allowing the interlocutory application be set aside.

7.The learned Counsel for the respondents/defendants would submit that the Commissioner has visited the property, filed his report, but he has not taken the assistance of the Surveyor and through proper measurement alone, the extent of the property can be ascertained exactly and only for that purpose, the interlocutory application has been filed and therefore, the learned trial Judge has rightly allowed the application ordering re-issuance of commissioner warrant and therefore, there is no reason to interfere with the order of the trial Court.



8.This Court paid its anxious consideration to the rival submissions and perused the materials placed on record.

9.The petitioner/plaintiff has filed a Suit in O.S.No.88 of 2010 before the learned Additional District Munsif, Karur for permanent injunction restraining the defendants, their men, servants, agents, relatives, family members, associates or any one on their behalf from in any manner interfering with the plaintiffs peaceful possession and enjoyment of the suit property.

10.The respondents / defendants have filed an interlocutory application in I.A.No.1178 of 2013 for re-issuance of the Commission Warrant to the Commissioner to inspect the suit properties and the properties of the 1st defendant, measure the same with the help of the Surveyor and submit his additional report and plan.

11.The said interlocutory application in I.A.No.1178 of 2013 was allowed by the learned District Munsif, Karur by order dated 27.11.2013. It appears that in the Suit a Commissioner has already been appointed, the said Commissioner has also inspected the property and filed his report. However, the respondents/defendants have not filed any objection to the report of the Commissioner. But, filed the interlocutory application, for revisiting the property by the Commissioner, after closing the plaintiff's side evidence and after examination of DW1.

12.Though the said application was filed belatedly, it appears that the Commissioner has taken measurement without the assistance of the Surveyor. The exact extent of the property can be ascertained by the Commissioner only with the help of the Surveyor and therefore, the order of the trial Court allowing the interlocutory application to revisit the property and to measure the same with the help of the Surveyor would in no way prejudice the case of the petitioner/plaintiff.

13.Accordingly, this Civil Revision Petition is dismissed. No Costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



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To
The Additional District Munsif,
Karur.

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