



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD).No.1192 of 2016

and

C.M.P.No.6548 of 2016

Subash

.. Petitioner

Vs.

Prema

.. Respondent

Prayer: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, against fair and decreetal order dated 11.02.2016 made in I.A.No.8 of 2015 in A.S.No.28 of 2005 on the file of the Principal Sub Court, Puducherry.

For Petitioner : Mr.M.J.Vijayaraaghavan

For Respondent : Mr.M.A.R.Pragash

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).)

This Civil Revision Petition is filed to set aside the judgment and



decree dated 11.02.2016 made in I.A.No.8 of 2015 in A.S.No.28 of 2005 on the file of the Principal Sub Court, Puducherry.

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2.The petitioner is the plaintiff and respondent is the defendant in O.S.No.62 of 1994 on the file of the Principal District Munsif Court, Pondicherry. The petitioner has filed the suit for permanent injunction restraining the respondent from disturbing the petitioner's peaceful possession and enjoyment of the suit property. After contest by the respondent, the said suit was dismissed by the learned Principal District Judge, Pondicherry, in the judgment and decree dated 17.12.2002. Against the said order of dismissal, the petitioner has filed first appeal in A.S.No.28 of 2005. In the appeal, the petitioner filed I.A.No.8 of 2015 under Section 151 of the Civil Procedure Code to pass an order to trace out the missing 'spot report' and 'specimen', which was filed by Mr.Rangarajan, the Advocate Commissioner, along with his report marked as Ex.C6. According to the petitioner, when his Advocate was preparing for arguments in the appeal, he found out some of the vital documents were missing from the case file. The missing documents are part and parcel of the Advocate Commissioner Mr.Rangarajan's report, which was marked as Ex.C6 before the trial Court. In the report, the Advocate



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Commissioner has stated that Mr.K.Palaniappan, the earlier Advocate Commissioner in fact had executed the warrant and at the time of execution, he had taken some photographs and collected some bricks from the suit property, which was handed over to Mr.Rangarajan, the Advocate Commissioner and he is submitting the same along with the spot report of Mr.Palaniappan, the earlier Advocate Commissioner. Those spot report and specimen are vital documents to prove the case of the petitioner. Mr.Rangarajan, the Advocate Commissioner after execution of the warrant, filed his report, which was marked as Ex.C6. As soon as missing of documents and specimen noticed by the petitioner's counsel, he filed a memo dated 14.09.2007. In the index sheet sent by the trial Court, it was specifically mentioned about the missing documents and hence, it is necessary to pass order to trace out the missing spot report and specimen filed by Mr.Rangarajan, the Advocate Commissioner.

3.The respondent did not file any counter affidavit.

4.The learned Judge considering the averments made in the affidavit, materials available on record and the evidence of Mr.Rangarajan, the



Advocate Commissioner recorded in the suit, dismissed the application holding that when Mr.Rangarajan, Advocate Commissioner was examined before the trial Court, he deposed that he is producing photographs and has not mentioned about the spot report and specimen, the appeal is pending in the year 2005 without any progress, for want of some fictitious spot report and specimen, which were not at all marked in the trial Court.

5.Against the said order of dismissal dated 11.02.2016 made in I.A.No.8 of 2015, the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel appearing for the petitioner contended that Mr.Palaniappan, the earlier Advocate Commissioner partially executed the warrant issued with him and handed over the spot report and specimen to Mr.Rangarajan, the Advocate Commissioner. Mr.Rangarajan, Advocate appointed subsequently as an Advocate Commissioner and filed report mentioning that through Mr.K.Palaniappan, Advocate Commissioner, in fact executed the warrant and at the time of execution, he had taken some photographs and some bricks from the suit property, which were handed over



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to him along with spot report and specimen prepared by Mr.Palaniappan, the earlier Advocate Commissioner. The learned Judge in the year 2012 recorded in the notes paper that spot report is missing and directed to trace out the same. The petitioner has filed a suit for permanent injunction, which was dismissed and against the same, the petitioner filed an appeal. There is no reason for the petitioner to protract the appeal filed by him. Mr.Palaniappan, the Advocate Commissioner is appearing for the respondent in the first appeal. The learned Judge on erroneous reasons dismissed I.A.No.8 of 2015 and prayed for setting aside the order of the learned Judge. In support of his contention, he relied on the orders of this Court reported in **2009 4 CTC 280 [M.Chinnappan and others Vs. P.Shanmugam and others]** and **2005 5 CTC 91 [K.R.Sengottuvelu and others Vs. V.Karuppa Naicker and others]** and prayed for allowing the present Civil Revision Petition.

7.The learned counsel appearing for the respondent submitted that the suit filed by the petitioner was dismissed by the trial Court. Before the trial Court, the Advocate Commissioner Mr.Rangarajan was examined and deposed that he is producing only photographs and he has not produced any spot report or specimen. The learned Judge considering entire materials along



with evidence of Mr.Rangarajan, the Advocate Commissioner, dismissed the I.A.No.8 of 2015. There is no error in the order of the learned Judge and prayed for dismissal of the present Civil Revision Petition.

8.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the entire materials available on record.

9.From the materials available on record, it is seen that the petitioner has filed O.S.No.62 of 1994 on 25.01.1994 for permanent injunction restraining the respondent from disturbing his peaceful possession and enjoyment of the suit property. In the said suit, on the application filed by the petitioner, Mr.Palaniappan, Advocate, was appointed as Advocate Commissioner. Subsequently, he returned the warrant due to personal reason. Mr.Rangarajan, Advocate was appointed as Advocate Commissioner. Mr.Rangarajan, Advocate Commissioner executed the warrant and filed his report. In para 7 of the report of Advocate Commissioner, Mr.Rangarajan, it is stated as follows:



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“Thiru.K.Palaniappan, Advocate, Pondicherry was earlier appointed as Commissioner in the above suit and in fact he had executed the warrant and at the time of execution, he had taken some photographs and collected some bricks from the suit property, which have been handed over to me. I am submitting the same along with the spot of Thiru.K.Palaniappan herewith”

10.The suit was dismissed and the petitioner filed first appeal in A.S.No.28 of 2005. In the first appeal, the petitioner filed the present I.A.No.8 of 2015 stating that his Advocate found that some vital documents are missing from the case file. The petitioner's counsel filed a memo dated 14.09.2007 for tracing out spot report and specimen collected by Mr.Palaniappan, the earlier Advocate Commissioner. In the year 2012, the then Presiding Officer recorded in the notes paper that the said documents are missing and directed to trace out all the documents, if they are really available. After filing the memo, the petitioner filed the present application. The Presiding Officer considered the evidence of Mr.Rangarajan, the Advocate Commissioner and found that the said Advocate Commissioner during his evidence deposed that he is producing photographs and he has not



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deposed that he is producing spot report and specimen. There is nothing on record to show that the learned counsel for the petitioner questioned the Advocate Commissioner about the spot report and specimen mentioned in his report. Further, according to the petitioner, Mr.Palaniappan, the earlier Advocate Commissioner partially executed the warrant. If he has executed the warrant, he ought to have returned the warrant along with his report enclosed the photographs, spot report and specimen. On the other hand, Mr.Rangarajan, the Advocate Commissioner appointed subsequently filed report stating that Mr.Palaniappan, the earlier Advocate Commissioner has handed over those documents to him. But during his examination, he has deposed that he is producing only photographs. In view of the same, Mr.Rangarajan, has not produced spot report of Mr.Palaniappan, the earlier Advocate Commissioner and specimen collected by him. Further, the report of the Advocate Commissioner is only to assist the Court and it cannot be the sole criteria for deciding the suit or appeal. The petitioner is seeking the relief of permanent injunction restraining the respondent on the ground that he is in possession of the suit property. It is for the petitioner to prove his possession by letting in acceptable evidence.



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11.In the orders relied on by the learned counsel for the petitioner, this Court directed to trace out the missing documents and to take action against the concerned staff. In the present case, the spot report or specimen are not produced and marked by Mr.Rangarajan, the Advocate Commissioner during the trial. In view of the same, the orders relied on by the learned counsel for the petitioner do not advance the case of the petitioner. The learned Judge considering all the materials and evidence of Mr.Rangarajan, the Advocate Commissioner, dismissed the I.A.No.8 of 2015 by giving cogent and valid reason. There is no error or irregularity in the said order of the learned Judge warranting interference by this Court.

12.For the above reasons, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

15.11.2021

vkr

Index : Yes / No
Internet : Yes / No

To
The learned Principal Subordinate Judge,
Pondicherry.



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V.M.VELUMANI, J.

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