

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P. (NPD) No.938 of 2021
and
C.M.P.No.7590 of 2021

Ravichandran

..Petitioner/Petitioner/Appellant

Vs

Amutha

..Respondent/Respondent/Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records relating to the fair and decreetal order dated 13.03.2020 made in I.A.No.1 of 2019 in A.S.No.35 of 2018 on the file of the Principal Sub-ordinate Court, Ariyalur and set aside the same.

For Petitioner

..

Mr.Usha Ramman

For Respondent

..

No appearance

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ORDER

The appellant in A.S.No.35 of 2018 now pending on the file of the Sub Court, Ariyalur, is the revision petitioner herein. The appellant had filed I.A.No.1 of 2019 seeking permission for appointment of an Advocate Commissioner to once again revisit the property along with a surveyor and file a report.

2.O.S.No.17 of 2012 had been filed by the plaintiff before the District Munsif Court Ariyalur, seeking a judgment and decree in the nature of a permanent injunction restraining the defendant from interfering with the peaceful possession of the suit property and for costs. The suit schedule property as given in the suit was situated in S.F.No.252/14A3 in KK Nagar, South Ariyalur, Ariyalur, and was 50 Feet in length and 3/4 feet in width and 7 feet in height compound wall. The suit was decreed by a judgment dated 28.09.2018.

3.Questioning that judgment, the present revision petitioner had filed A.S.No.35 of 2018. In the said appeal he had filed the I.A.No.1 of 2019. That application came to be dismissed by order dated 13.03.2020 and questioning that order the present revision petition has been filed.

4. In the course of the order, the learned Principal Subordinate Judge very clearly observed that when the suit was pending on two separate occasions Advocate Commissioner had visited the petitioner premises. It had also been stated that the Advocate Commissioner had forwarded a report that there is a difference in the physical features between the first visit and in the second visit. The learned Judge also stated that PW-1 in his examination had very clearly stated that he is claiming possession only in S.No.252/14-A3 and he had also never stated that the said S.No.252/14-A3 comes within the property of the present petitioner / defendant in the suit / appellant in the appeal. The learned Judge had therefore stated that sufficient records are available to dispose of the appeal.

5. The petitioner cannot engage himself in a roving enquiry by seeking appointment of an Advocate Commissioner and even asking for the commissioner to revisit the place. The Commissioner visited the property on two separate occasions. Again the petitioner seeks appointment of an Advocate Commissioner or for the same Commissioner to revisit the property in the first appeal proceedings.

6. Let the parties engage in arguing the first appeal on the basis of the available records and I am confident that the learned Judge would pass an order on merits on the basis of available of records and on the basis of evidence already adduced. A Commissioner cannot be appointed for collecting evidence to the satisfaction of the present petitioner. He can give a report with respect to the land as he finds it and if the report is not to the liking of the present petitioner, he should have to file his objection.

7. Again in the course of the order of the learned Principal Sub Judge also observed that with respect to the report before the trial court, the petitioner had not filed any objections. It is also seen from the perusal of the judgment of the trial court that the petitioner had not taken any steps to summon the Advocate Commissioner to test his report and also question the report filed by him.

8. Since the petitioner had not taken all those steps before the trial court, I hold that it is only to protract to the first appeal proceedings that the application was filed.

9.I find no reasons to interfere with the order of the learned Sub Judge, Ariyalur, passed in I.A.No.1 of 2019. Hence, the Civil Revision Petition is dismissed. No order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

22.04.2021

Internet:Yes/No
Index:Yes/No
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To
The Principal Subordinate Court,
Ariyalur.



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C.V.KARTHIKEYAN,J.

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