

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.4.2021.

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P.(PD) No.981 of 2021

and

C.M.P.No.7850 of 2021

Subramaniam @ Chinnadurai

Petitioner

vs.

Dharmaraj

Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 3.2.2021 passed in I.A.No.4 of 2019 in I.A.No.1887 of 2015 in O.S.No.771 of 2015 on the file of the II Additional Subordinate Judge, Erode.

For Petitioner : Mr.V.P.Sengottuvel

For Respondents : Mr.S.Kaithamalai Kumaran

ORDER

The plaintiff in O.S.No.771 of 2015, now pending on the file of the Sub Court, Erode is the revision petitioner herein.

2. The said suit had been filed by the plaintiff against the neighbour seeking a declaration that the plaintiff is the absolute owner of the property which had been described in 'A' schedule property

and for consequential permanent injunction restraining the defendant from interfering with possession and also for mandatory injunction to remove the windows, openings and sunshade which the defendant is said to have fixed on the southern side of 'AB' Wall facing the plaintiff's vacant space and preferably by appointment of an Advocate Commissioner and also for the costs of the suit.

3. Alongwith the said suit, the plaintiff, in order to determine the physical features of the land, had filed I.A.No.1887 of 2015 taking advantage of Order 26 Rule 9 of the Code of Civil Procedure seeking appointment of an Advocate Commissioner to go over to the particular place to note down the physical features and file a report.

4. The court had also obliged the request and an Advocate Commissioner was appointed. Report was also filed by the Advocate Commissioner.

5. The petitioner herein was not satisfied with the said report, but quite sensibly filed objections and the objections have been recorded. Thereafter, written statement was filed and issues were framed. The parties were invited to adduce evidence. The plaintiff was examined as PW1 and he also marked Exs.A1 to A12. The matter was, then, posted for cross examination of PW1. At that stage, the

plaintiff filed Application in I.A.No.121 of 2018 to decide as preliminary issue whether the court had pecuniary jurisdiction to examine the issues.

6. I would not like to go deep in the said issue as I wonder how the plaintiff himself had filed an Application questioning the jurisdiction of the very court where he had instituted the suit. That Application came to be dismissed. Preliminary issue was also framed. This is evident from the order which is now under revision.

7. Thereafter, the petitioner filed I.A.No.4 of 2019 again seeking for appointment of Advocate Commissioner or to reissue the warrant to the same Advocate Commissioner. The respondent herein/defendant in the suit did not file counter. Order was passed on 2.3.2021 in the said Application. That order is the subject matter of the revision petition.

8. The learned counsel for the petitioner took the court through the order passed by the learned Judge and invited the court examine the reasons assigned. The learned counsel stated that the reasons cannot withstand the scrutiny of the court. The learned Judge had made observations about the schedule of property and wondered whether it was the same property or a different property and had also

stated that the provision of law was not correct. It was also observed that the relief seeking re-issue of Commissioner Warrant at a belated stage is not proper.

9. Be that as it may, I am not going into the reasons as the Application itself has been dismissed. The matter may rest at that.

10. The parties are advised to participate in the trial proceedings. PW1 may subject himself for cross examination and also examine any other witness if he so intends. Thereafter, the defendant may also examine himself and other witnesses on his side and they may also subject themselves for cross examination.

11. Either party can always reserve their right to summon the Advocate Commissioner and put his report to test.

12. After the evidence is recorded and at that point of time, if the learned Judge once again feels that investigation at local level is required for the purpose of elucidating any matter in dispute, certainly, Order 26 Rule 9 C.P.C. gives a small window for appointment of Advocate Commissioner, to issue warrant to Advocate Commissioner.

13. The learned Judge, after recording evidence, if such a requirement is felt by the learned Judge, since he has to be confident that while analysing the evidence, a just Judgment should be

delivered, can appoint an Advocate Commissioner or re-issue the warrant to the same Advocate Commissioner.

14. Let the plaintiff and the defendant not create any further confusion in the entire issue and file Applications during the course of trial. Filing Applications may ultimately lead to the disadvantage to either one of the parties. Therefore, filing of Interlocutory Application during the course of evidence cannot be encouraged and as a matter of fact should not be encouraged. As observed by me, let the learned Judge keep his/her mind open, examine the evidence adduced by the parties and decide whether the evidence on record is sufficient and on examining such evidence, he or she may proceed to deliver the Judgment.

15. If the learned Judge, at that stage, feels that some more local investigation is required, then, I am confident that the learned Judge would resort to Order 26 Rule 9 C.P.C.

16. Let the parties give way to the learned Judge to take a decision. Let the trial proceed. I hope and trust that the plaintiff and defendant would not take any unnecessary adjournments and rather be eager to co-operate with the trial.

17. With the said observation, the revision petition is disposed of, however, giving a small opening at the conclusion of evidence No order as to costs. The connected Miscellaneous Petition is closed.

29.4.2021.

Index: Yes.
Internet: Yes.
ssk.

To

II Additional Subordinate Judge,
Erode.



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C.V.KARTHIKEYAN, J.

Ssk.



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