



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.03.2021

CORAM

THE HON'BLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD)No.1476 of 2019

and

CMP (MD)No.7829 of 2019

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Marisamy

... Petitioner/ Petitioner/Petitioner/
Plaintiff

vs.

1. Ganesan
2. Ayyadurai
3. Ramasubbu
4. Umapathi

.... Respondent/Respondents/
Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to allow this civil revision petition by setting aside the order and decree made in I.A.No.660 of 2018 in I.A.No.755 of 2017 in O.S.No.128 of 2013 dated 16.07.2019, on the file of the Additional Subordinate Court, Srivilliputhur.

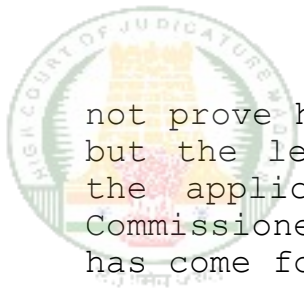
For Petitioners : Mr.M.Thirunavukkarasu

For Respondents : Mr. M.P.Senthil for R1,R2 and R4
Mr.G.Venugopal for R3

O R D E R

This Civil Revision Petition has been filed to set aside the order and decree dated 16.07.2019 made in I.A.No.660 of 2018 in I.A.No.755 of 2017 in O.S.No.128 of 2013, on the file of the Additional Subordinate Court, Srivilliputhur.

2.The learned counsel for the revision petitioner/plaintiff would state that the suit in O.S.No.128 of 2013 has been filed by the petitioner for declaration declaring the suit second schedule property as the absolute property of the plaintiff and for consequential permanent injunction. The plaintiff has also sought for mandatory injunction to demolish the illegal construction made by the defendants in the suit schedule property and to hand over the same and the plaintiff has sought for other reliefs also. Pending suit, the revision petitioner filed I.A.No.239 of 2013 in the above suit to appoint an Advocate Commissioner and the above I.A. was allowed. As the Advocate Commissioner had not measured the suit property properly, the revision petitioner filed I.A.No.755 of 2017 to appoint a fresh Advocate Commissioner and he also filed another I.A.No.660 of 2018 to examine the Advocate Commissioner as plaintiff side witness. According to the petitioner, unless and until the Advocate Commissioner appointed by the Court is examined, he could



not prove his case for scrapping the Advocate Commissioner's report, but the learned Judge without considering his case, has dismissed the application in I.A.No.660 of 2018 to examine the Advocate Commissioner and aggrieved over the same, the revision petitioner has come forward to file the present revision petition.

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3. When the matter is taken up for hearing today, the learned counsel for the petitioner as well as the respondents in unison would submit that I.A.Nos.755 of 2017 and 660 of 2018 have to be decided independently, but the Court below without considering the same, has dismissed the application in I.A.No.660 of 2018 to examine the Advocate Commissioner and therefore, both the counsels would express that the impugned order has to be set aside and the matter has to be remitted to the Court below for fresh consideration.

4. Mr.G.Venugopal, learned counsel takes notice for the 3rd respondent. Heard the learned counsel for the petitioner as well as the respondents.

5. Admittedly, two interim applications have been filed one for examining the Advocate Commissioner and the other for appointment of fresh Advocate Commissioner. Since both are separate applications, if the learned Judge considers I.A.No.755/2017 seeking to appoint fresh Advocate Commissioner independently, only then, I.A.No.660/2018 seeking to examine the Advocate Commissioner as a witness, can be disposed of. It is necessary that both the applications have to be heard independently to come to a correct conclusion and the learned counsel for the petitioner as well as the respondents would agree that the matter has to be heard independently.

6. Therefore, recording the above submission, without advertting to the merits of the case, the impugned order and decree made in I.A.No.660 of 2018 in I.A.No.755 of 2017 in O.S.No.128 of 2013 dated 16.07.2019, on the file of the Additional Subordinate Court, Srivilliputhur, is set aside and the matter is remanded back to the learned Judge to consider both applications independently and pass fresh orders on its own merits.

7. With the above direction, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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To

1) The Additional Sub Judge,
Srivilliputhur.

2) The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.M.THIRUNAVUKKARASU, Advocate (SR-6798[F] dated
24/02/2021)

+1 CC to Mr.M.P.SENTHIL, Advocate (SR-6833[F] dated 24/02/2021)

ORDER MADE IN
C.R.P (MD) No.1476 of 2019
12.03.2021

VB (26.03.2021) 3P 6C