



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATE: 15.9.2021.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. (MD) No.2113 of 2014
and
C.M.P.No.1 of 2014

N.M.Mithar Mohideen ...Petitioner/Petitioner/1st Defendant

vs.

Raja Educational Trust,
Reg.No.711/1985,
through its Vice President
A.Jesus Raja
Vadakkankulam,
Radhapuram Taluk,
Tirunelveli District. ...Respondent/Respondent/Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 25.7.2013 passed in I.A.No.159 of 2013 in O.S.No.33 of 2013 on the file of the Subordinate Judge, Valliyoor.

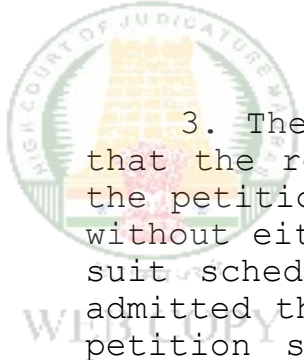
For Petitioner : Mr.S.R.Anbarasu

For Respondent : Mr.D.Nallathambi

ORDER

The civil revision petition has been filed against the Fair and Decreetal order dated 25.7.2013 passed in I.A.No.159 of 2013 in O.S.No.33 of 2013 on the file of the Subordinate Judge, Valliyoor.

2.Learned counsel for the petitioner/1st defendant would submit that the respondent/plaintiff had filed the suit seeking declaration and permanent injunction and they had also obtained ex parte injunction in I.A.No.103 of 2013 and 104 of 2013. He would further submit that the respondent/plaintiff had pleaded that the suit schedule property is a vacant site without any superstructure and electricity service connection and he had stored the building materials in the premises whereas contrary to that averments, there are superstructures, electricity connection in the suit schedule property and crops have also been raised in the suit schedule property and thereby in order to elucidate that there are buildings and other crops available in the suit schedule property, the petitioner had filed the petition seeking for appointment of Advocate Commissioner.



3. The learned counsel for the petitioner would further submit that the respondent herein has not denied the submissions made by the petitioner and that they have also given a prevaricating reply without either admitting or denying that there are buildings in the suit schedule property. He would also submit that though it is admitted that in an earlier suit, the petitioner herein had filed a petition seeking appointment of Advocate Commissioner and later, withdrawn the same, it cannot be held to be a res judicata against the petitioner whereas the Trial Court, without taking into consideration the necessity for appointment of Advocate Commissioner, had dismissed the Application, against which, the revision has been filed.

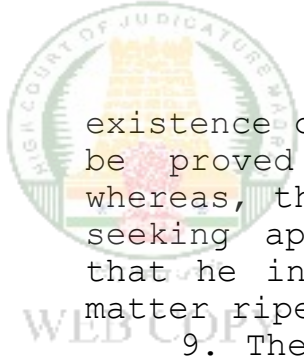
4. The learned counsel for the petitioner would reiterate that appointment of Advocate Commissioner is not for collecting evidence and it is only to note down the physical features. He would submit that a wrong prayer had been stated in the petition as if it is for measurement of compound wall and to note down the physical features.

5. Per contra, the learned counsel for the respondent would submit that appointment of Advocate Commissioner can be made only for the purpose of elucidating any matter in dispute and in this case, the matter in dispute is only with regard to title to the suit property and not with regard to availability or non-availability of any superstructure and crops and the suit is filed seeking for a declaration that the suit schedule property absolutely belongs to the petitioner and to declare the sale deeds dated 2.5.2011 bearing No.1574/2011 and 1576/2011 of Panakudi Sub Registrar as null and void and the Trial Judge, finding that the dispute involved in the case is not with regard to availability or non-availability of superstructure and crops, has rightly dismissed the petition.

6. The learned counsel for the respondent would further submit that the petitioner herein had earlier filed a suit in O.S.No.93 of 2012 on the file of the District Munsif, Valliyoor and admittedly, in the said suit, he had a petition for appointment of Advocate Commissioner and later, he had withdrawn the said Application and such an activity of the petitioner herein reveals that the intention of the petitioner is to delay the trial and to harass the respondent/plaintiff and the Trial Court, rightly finding that the petition is vexatious and dismissed the Application. He would further submit that the parties have to prove their case by letting in evidence independently and the appointment of Advocate Commissioner cannot be done for collecting evidence by either side.

7. Heard the learned counsel appearing for either side and perused the materials available on record.

8. It is the case of the petitioner/1st defendant that there is some superstructure with electricity connection in the suit schedule property and to note down the physical features, he seeks for appointment of advocate commissioner. Admittedly, the suit is one for declaration of title and the dispute is not with regard to availability or non-availability of any superstructure. The



existence of superstructure and electricity connection can very well be proved by producing necessary evidence available with him whereas, the attempts made by the petitioner to harp on the issue by seeking appointment of Advocate Commissioner gives an impression that he intends to protract the litigation instead of letting the matter ripe for trial.

9. Therefore, I do not find any infirmity or perversity in the finding arrived at by the Trial Judge. The civil revision petition is dismissed. No costs. The connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ssk.

Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilised for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. Subordinate Judge,
Valliyoor.

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-29499[F] dated 17/09/2021)

C.R.P. (MD) No.2113 of 2014
and
C.M.P.No.1 of 2014

15.9.2021.

MGJ(29.09.2021) 3P 3C