



C.R.P. No.231 of 2021 & C.M.P. No.2178 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2022

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.R.P. No.231 of 2021 &
C.M.P. No.2178 of 2021

K. Nachimuthu ... Petitioner

Vs.

N. Srinivasan ... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 13.03.2020 passed in I.A. No.03 of 2019 in A.S. No.53/2016 on the file of the Principal Subordinate Court, Erode.

For Petitioner : Mr.M. Guruprasad

For Respondent : Mr. S. Jeroma

ORDER

This Civil Revision Petition is filed against the fair and decreetal orders 13.03.2020 passed in I.A. No.03 of 2019 in A.S. No.53/2016 on the file of the Principal Subordinate Court, Erode.



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2. The revision petitioner is the appellant in A.S. No.53/2016 on the file of the Principal Subordinate Judge, Erode. He filed a suit in O.S.No.247/2012 on the file of the Principal District Munsif, Erode, seeking for a relief of permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit property and also to remove the unlawful and illegal construction put up by the defendant in the first item of the suit properties.

3. The defendant filed a written statement in the trial court and after full contest, the learned Principal District Munsif, Erode, dismissed the suit filed by the plaintiff vide his decree and judgment dated 26.08.2016, aggrieved over which, the plaintiff filed an appeal in A.S. No.53/2016 on the file of the Principal Subordinate Judge, Erode. At the appellate stage, the present revision petitioner/appellant/plaintiff filed an application in I.A.No.3/2019 under Order XXVI Rule 9 and Section 151 CPC to appoint an Advocate Commissioner to inspect the suit properties and to measure the same with the help of a Taluk Surveyor. The



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respondent filed a counter and after full contest, the learned Principal Subordinate Judge, Erode, dismissed the said application by observing thus:

Any proceeding which ought to have been taken before the trial court is sought to be taken before the appellate court, valid reasons must be adduced by the petitioner. This principles applies for the taking of evidence and for production of documents, etc. The reason must be that the opportunities must have been denied by the petitioner without sufficient cause. But no such reason is adduced before this court. Nor the same is assigned with reasons. The petitioner has pleaded his right on the basis of the suit. But the petitioner has not reasoned out the cause for filing the petition in the stage of the appeal. Morefully the petitioner has also cited the observation of the trial court for filing the petition. But the same in the considered view of this court could not be a reason to allow the petition before the appellate court for appointment of commissioner. Hence the petition is considered as devoid of merits and is liable to be dismissed.



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4. Heard Mr.M. Guruprasad, learned counsel for the revision petitioner and Mr. S. Jeroma, learned counsel for the respondent.

5. It is pertinent to point out that the present revision petitioner filed an application in I.A. No.283/2012 before the trial court to appoint an Advocate Commissioner and the same was allowed and an Advocate commissioner was appointed by the trial court and he also filed his report and plan. Admittedly the revision petitioner did not file any objection to the Advocate Commissioner's report. Thereafter, the respondent/defendant filed an application in I.A. No140/2014 to appoint another Advocate commissioner to inspect the suit properties and to measure the same with the assistance of a Taluk surveyor, in which the present revision petitioner filed a counter by stating that appointment of commissioner would amount to collection of evidence. Thereafter the said application was dismissed by the trial court on 27.06.2014. At the appellate stage, the present revision petitioner/appellant/plaintiff filed an application in I.A.No.3/2019 under Order XXVI Rule 9 and Section 151 CPC to appoint an Advocate



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Commissioner to inspect the suit properties and to measure the same with the help of a Taluk Surveyor. As rightly pointed out by the lower appellate court the revision petitioner did not adduce any reason for appointment of another Advocate Commissioner to inspect the suit properties. A bare perusal of the plaint in O.S. No.247/12 shows that the plaintiff has specifically contended that the defendant is attempting to put up a concrete structure encroaching 1/2 feet on the southern side of his property which is shown as suit Item No.1. It is further contended by him that the said construction put up by the defendant is preventing sun light and air to the house of the plaintiff and therefore the defendant must be restrained from encroaching upon his property (item No.1) and also from putting up any construction.

6. The suit, as already observed, was dismissed by the trial court. The point which has to be decided in the present petition is that whether appointment of another Advocate Commissioner at the appellate stage is absolutely necessary. The learned Principal Subordinate Judge,



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Erode, in his orders had stated that the revision petitioner did not adduce any reason for appointment of another Advocate Commissioner at the appellate stage. The observation of the first appellate court cannot be found fault with because in the affidavit filed in support of the application in I.A. No.3/2019 in A.S. No.53/2016, no reason has been assigned for appointment of another Advocate Commissioner. Moreover, the respondent/defendant filed a similar application before the trial court itself in I.A. No.140/2014 for appointment of another Advocate Commissioner to inspect the suit properties and to measure same with the help of a taluk surveyor and the same was contested by the present revision petitioner by contending that appointment of commissioner would amount to collection of evidence. The said application was dismissed on 27.06.2014. At the appellate stage the revision petitioner wants to get appointed an Advocate Commissioner once again that too without assigning any convincing reason for the same. In the circumstances, I do not find any infirmity in the orders passed by the lower appellate court.



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7. In the result,

- i. the Civil Revision Petition is dismissed. No Costs. Consequently connected miscellaneous petition is also dismissed.
- ii. the fair and decreetal orders dated 13.03.2020 passed in I.A. No.03 of 2019 in A.S. No.53/2016 on the file of the Principal Subordinate Court, Erode, is upheld.
- iii. Since the appeal suit is of the year 2016, the learned Principal Subordinate Judge, Erode, is directed to dispose of the appeal as expeditiously as possible.

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Index : Yes/No

Internet : Yes/No

Speaking/non speaking
bga

To,
The Principal Subordinate Judge, Erode



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R.HEMALATHA, J.,

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