



C.R.P(PD)No.1171 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.09.2022

Coram

The Honourable Mrs.Justice R.HEMALATHA

C.R.P(PD) No.1171 of 2020

K.Devaraj

...Petitioner

Versus

E.Thanikachalam

...Respondent

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the order and decretal order dated 03.02.2020 made in I.A.No.213 of 2019 in O.S.No.11 of 2019 on the file of District Munsif cum Judicial Magistrate Thirukalukundram, Chengalpattu District.

For Petitioner : Mr.K.Vishwajeeth Yogeshwara
for Mr.G.Krishnamurthy
For Respondent : Mr.N.Sivaprakash

ORDER

This Civil Revision Petition has been filed against the order passed by the learned District Munsif-cum-Judicial Magistrate, Thirukalukundram, Chengalpattu District in I.A.No.213 of 2019 in O.S.No.11 of 2019 dated 03.02.2020.



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2. The revision petitioner is the plaintiff in the suit O.S.No.11 of 2019 on the file of the District Munsif-cum-Judicial Magistrate Court, Thirukalukundram, Chengalpattu District. He filed the suit for the following reliefs:

(a) for a permanent injunction restraining the 1st defendant from interfering with his peaceful possession and enjoyment of the suit property

(b) for a permanent injunction restraining the 1st defendant from alienating the suit property in favour of the 5th defendant.

(c) for declaring that the general power of attorney deed dated 31.07.2003, executed by him in favour of one Late Durai registered as Document No.173/2003 on the file of SRO, Thirukazhukundram as null and void.

3. The defendants in the suit filed their written statements. During the pendency of the suit, the respondent/4th defendant filed an Interlocutory Application in I.A.No.213 of 2019 under Order XXVI Rule 9 r/w. Section 151 of C.P.C, to appoint an Advocate Commissioner to note down the physical features of the suit property and to measure the same with the help



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of a Taluk Surveyor. The revision petitioner/plaintiff filed his counter affidavit. After full contest, the learned District Munsif-cum-Judicial Magistrate, Thirukalukundram, Chengalpattu District allowed the aforesaid application and appointed an Advocate Commissioner. Aggrieved over the same, the present Civil Revision Petition has been filed.

4. Mr.K.Vishwajeeth Yogeshwara, learned counsel appearing for the revision petitioner contended that the revision petitioner/plaintiff has filed the suit challenging the general power of attorney dated 31.07.2003 and for a permanent injunction restraining the 1st defendant from interfering with his peaceful possession and enjoyment of the suit property and alienating the same. In such circumstances, the appointment of Advocate Commissioner is not necessary in the instant case is concerned.

5. On the contrary, Mr.N.Sivaprakash, learned counsel appearing for the respondent/4th defendant contended that the revision petitioner/plaintiff has actually encroached upon the suit property and hence, the respondent/4th defendant had reserved his right to seek for recovery of possession from the



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revision petitioner/plaintiff by filing a counter claim in the suit. According to the respondent/4th defendant, the trial Court had rightly appointed an Advocate Commissioner and allowed the application.

6. In the orders in I.A.No.213 of 2019, the learned trial Judge has observed as under:

“Here it is a specific case of 4th defendant that there was a encroachment from the plaintiff side over his purchase property from plaintiff's power agent namely Durai. Admittedly as rightly pointed out by learned counsel for plaintiff/respondent the subject sale deed and power of attorney deed was under challenge this Court can ascertain that if there was any encroachment over the suit property. Moreover, the petitioner also pleaded in his affidavit that he is reserving his right to raise a counter claim if they exactly comes to knowledge of encroachment. Hence it is just and necessary to ascertain such fact and it can also decide well with the suit. So that it can avoid multiplicity of future proceedings.”

7. The above observation of the trial Court cannot be sustained for the simple reason that the Advocate Commissioner cannot give a finding as to whether the revision petitioner/plaintiff had made an encroachment over



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the suit property. The revision petitioner/plaintiff had filed the suit challenging the General power of attorney and also, he had alleged that he is in possession of the property. It is for the revision petitioner/plaintiff to prove his pleadings in the plaint. The appointment of an Advocate Commissioner in the instant case is not necessary. Therefore, the orders passed by the learned trial Judge is liable to be set aside.

8. In the result, this Civil Revision Petition is allowed and the order passed by the learned District Munsif-cum-Judicial Magistrate, Thirukalukundram, Chengalpattu District in I.A.No.213 of 2019 in O.S.No.11 of 2019 dated 03.02.2020 is set aside. No costs.

9. Since the suit O.S.No.11 of 2019 is of the year 2019, the learned District Munsif-cum-Judicial Magistrate, Thirukalukundram, Chengalpattu District is directed to dispose of the same as expeditiously as possible.

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Index : Yes/No

Speaking Order (or) Non-Speaking Order

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R.HEMALATHA, J.

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To

The District Munsif cum Judicial Magistrate,
Thirukalukundram,
Chengalpattu District.

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