



C.R.P(NPD).No.2014 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2022

CORAM :

THE HONOURABLE MS. JUSTICE R.N.MANJULA

C.R.P(NPD).No.2014 of 2022

and

C.M.P.No.10329 of 2022

Kamalam

... Petitioner

Vs

Karunambikai

... Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, pleaded to set aside the fair and decreetal order of the learned II Additional Subordinate Judge, Coimbatore dated 28.02.2022 in I.A.No.1 of 2021 in A.S.No.115 of 2013 and consequently allow the I.A.No.1 of 2021 in A.S.No.115 of 2013 on the file of the II Additional Subordinate Judge, Coimbatore.

For Petitioner : Ms.L.Poovendra Perumal
for Mr.T.Saikrishnan



C.R.P(NPD).No.2014 of 2022

WEB COPY

ORDER

This Civil Revision Petition has been preferred challenging the order of the learned II Additional Subordinate Judge, Coimbatore dated 28.02.2022 made in I.A.No.1 of 2021 in A.S.No.115 of 2013.

2. The petitioner is the appellant and defendant in the suit filed by the respondent for the relief of mandatory injunction. The suit was decreed and hence, the revision petitioner has preferred an appeal in A.S.No.115 of 2013. During the pendency of the appeal, he has filed a petition in I.A.No.1 of 2021 for appointment of Commissioner and the said petition was dismissed. Aggrieved over that, this petition has been filed by the revision petitioner.

3. Learned counsel for the petitioner submitted that the learned Appellate Judge has chosen to dismiss the petition by observing that even during the suit proceedings, the Commissioner was appointed and he has filed his report; despite the Commissioner was appointed during the pendency of the suit, the report filed



C.R.P(NPD).No.2014 of 2022

by the Commissioner is not a complete one and hence, the Commissioner has to be appointed once again for visiting the suit property and file a report; only then the matter on issue can be dealt effectively; hence, the order of the learned trial Judge, Coimbatore should be reversed.

4. In the suit for mandatory injunction, the plaintiff has got the burden to prove that he has the right to remove the structures in the suit property. In order to prove the same, he himself has filed a petition for appointment of the Commissioner and the Commissioner has also visited the suit property and filed his report. In the order of the learned II Additional Subordinate Judge, Coimbatore dated 28.02.2022 made in I.A.No.1 of 2021 in A.S.No.115 of 2013, it is observed that when the Commissioner visited the suit property, the defendant did not cooperate and prevented him from visiting the suit property.

5. By pointing out the above observations, the learned counsel for the petitioner submitted that even according to the respondent, the Commissioner could not have visited the suit property completely and his report could be only an



C.R.P(NPD).No.2014 of 2022

incomplete one. If the revision petitioner prevented the Commissioner, when he visited the suit property for inspection, then he cannot once again seek for appointment of Commissioner by stating that the Commissioner could not have filed a full report.

6. If the allegations against the revision petitioner that he did not cooperate with the Commissioner, is not correct, the revision petitioner could have given Memo of instructions to the Commissioner at the time he visited the suit property and make him to visit the features as requested and file a report on these aspects.

7. Having not chosen to avail the above opportunity, the petitioner had filed a petition for re-appointment of Commissioner at the appellate stage. However, the burden is only for the plaintiff to prove the alleged encroachment. If the plaintiff has not proved the said fact, then the appellant can take advantage of the same and claim it as a merit for his appeal. At any cost, even then there is no necessity to seek for appointment of the Commissioner.



C.R.P(NPD).No.2014 of 2022

8. Hence, in all probabilities, it is right for the learned trial Judge to make an observation that the defendant has come forward with the present application for re-appointment of a Commissioner with an intention to drag the proceedings. Hence, I do not find any reason for interference.

9. In the result, this Civil Revision Petition stands dismissed and the order of the learned II Additional Subordinate Judge, Coimbatore dated 28.02.2022 made in I.A.No.1 of 2021 in A.S.No.115 of 2013 is confirmed. Consequently, the connected Miscellaneous Petition is also closed. No costs.

01.07.2022

rgi

Index : Yes
Internet : Yes
Speaking Order



WEB COPY



C.R.P(NPD).No.2014 of 2022

R.N.MANJULA, J.

rgi

To

1. The II Additional Subordinate Judge,
Coimbatore.
2. The Section Officer,
VR Section, Madras High Court,
Chennai.

C.R.P(NPD).No.2014 of 2022
and C.M.P.No.10329 of 2022

01.07.2022