



C.R.P. No. 3506 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 3506 of 2017
and
C.M.P. No. 16271 of 2017

P.V.Saji,
S/o. Late Varkey

... Petitioner

Versus

C.B.Abdul Khadar,
S/o. Bavakunheedu

... Respondent

PRAYER : Civil Revision Petition filed under Art.227 of Constitution of India, praying to set aside the Order and decreetal order dated 03.04.2017 made in I.A.No.11 of 2016 in O.S.No. 18 of 2014 on the file of Principal District Munsif Court, Gudalur.

For Petitioner : Mr.K.P.Jotheeswaran

For Respondent : Mr.J.Franklin



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ORDER

The Revision Petitioner is the defendant in the suit in O.S.No. 18 of 2014 on the file of learned Principal District Munsif, Gudalur, which was filed by the respondent/plaintiff for the relief of specific performance directing the defendant to execute the sale deed and permanent injunction restraining him from forcefully taking possession of the suit property in O.S.No. 132/50, R.S.No.44/3 to an extent of 3.75 cents.

2. The defendant denied the plaintiff's claim and he has filed his written statement. During the pendency of the suit proceedings, the plaintiff filed an application in I.A.No. 11 of 2016 under Order 26 Rule 9 of C.P.C. praying to appoint an advocate commissioner to note down the physical features in the suit property. After the oral agreement, the possession was given by the defendant and he planted plantain trees in the suit property. To show the demarcation and cultivation of crops in the suit property as well as to note down physical features, the plaintiff filed the said application. The same was strongly objected by the defendant stating that in order to collect



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the evidence, he is not entitled to file the said application. Moreover, it is a suit for specific performance, there is no necessity for appointment of advocate commissioner and the report of advocate commissioner is not necessary to decide the above dispute between the parties. On considering submissions of both sides, the trial judge held that the appointment of advocate commissioner to note down physical features is not amounting to collect the evidence and to prove the existence of trees and plants in the suit property, the plaintiff wanted to appoint an advocate commissioner and accordingly, the trial judge allowed the said application. Challenging the said order, the defendant preferred this Civil Revision Petition.

3. The learned counsel appearing for Revision Petitioner submitted that the trial court failed to take note of the fact that the plaintiff approached the court for the relief of specific performance and he has to prove his case by examining independent witnesses and not through advocate commissioner's report, hence, the objections raised by him. But, without appreciating the same, the trial court erroneously allowed the application and hence, he prayed to set aside the order passed by the trial court. To



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support his contentions, he relied on the following authorities held by this court :-

- (i) reported in **2006 (5) CTC 178** in the case of ***T.K.Krishnamurthy vs. Tamil Nadu Water and Drainage Board, rep.by its Senior Engineer and others.***
- (ii) reported in **2008 (5) CTC 81** in the case of ***Meenakshi Vennila and another***
- (iii) reported in **2009 (5) CTC 706** in the case of ***Elango Kasthuri***
- (iv) reported in **2013 (1) MWN (Civil) 248** in the case of ***Santha Satheesh vs. H.J.Walter and others***
- (v) reported in **2014 (5) LW 361** in the case of ***Jagadeeswari vs. Kandasamy and others***

4. By way of reply, the learned counsel for respondent/plaintiff submitted that based upon oral agreement, the possession was already given to the plaintiff by this defendant on 29.03.2011 and after that, he planted plantain trees in the suit property and cultivated crops in the suit property.



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To show the demarcation and cultivation of crops in the suit property, he has filed an application for appointment of advocate commissioner to note down the physical features and the report of advocate commissioner would not amount to collection of evidence. Hence, he prayed to allow this Civil Revision Petition.

5. Heard and considered rival submissions of learned counsel for petitioner as well as respondent and perused the records.

6. On considering the submissions of both sides as well as on perusal of records, it reveals that the plaintiff filed a suit for specific performance in the year 2014 and during the pendency of suit proceedings, he filed an application praying to appoint an advocate commissioner to note down physical features and also to find out whether the pathway is commenced from the panchayat road and also to identify the property by examining a Taluk Surveyor. On considering the issue pending between the parties and even though in a suit for specific performance, to show the plants as well as plantain trees in the suit property, the commissioner's report is just and



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necessary and it is not amounting to collection of evidence. Furthermore, the authorities relied on by the revision petitioner are not applicable to the facts of the present case, because the reasons assigned by the trial judge is justifiable one. Accordingly, this Civil Revision Petition is dismissed and the order passed by the trial court in I.A.No. 11 of 2016 is confirmed. However, since the suit is pending from the year of 2014, the trial court is directed to proceed with the trial and dispose the case within a period of six months from the date of receipt of copy of this order. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

Principal District Munsif,
Gudalur.



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T.V.THAMILSELVI, J.

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