



C.R.P.No.1981 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.1981 of 2024 and
C.M.P.No.10475 of 2024

Saravanan

... Petitioner

Vs.

1.Raghu

2.The Village Administrative Officer,
O/o. Tahsildar, Tirukoilur Taluk,
Kallakurichi District.

2.The Tahsildar,
Tirukoilur Taluk,
Kallakurichi District.

3.The District Collector,
Kallakurichi District,
Kallakurichi.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 30.04.2024 made in I.A.No.264 of 2024 in O.S.No.129 of 2024 on the file of Sub-Court, Tirukovilur, Kallakurichi District and to allow the civil revision petition.



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For Petitioner : Mr.C.Prabakaran

For R1 : Mr.T.Saikrishnan

ORDER

The petitioner/1st defendant in O.S.No.129 of 2024 filed this civil revision petition to set aside the impugned order, dated 30.04.2024 in I.A.No.264 of 2024 in O.S.No.129 of 2024 passed by the learned Subordinate Judge, Thirukovilur.

2.The learned counsel for the petitioner/1st defendant submitted that the lower Court erred in granting exparte interim order appointing Advocate Commissioner in a suit, for bare injunction under Order XXVI Rule 9 of C.P.C. The appointment of Advocate Commissioner is to inspect the suit property and draw rough sketch. On the request of the 1st respondent/plaintiff, the lower Court appointed one Mr.V.Semmalai, Advocate to inspect the suit property with the help of the Village Administrative Officer and Surveyor and to file report by 25.06.2024. The Advocate Commissioner fee is fixed at Rs.7,000/-. The requirement of Advocate Commissioner is to note down the physical features of the suit property. In the suit for bare injunction, the requirement does not arise. He



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further submitted that lower Court ought to have considered relief of bare injunction based on the 1st respondent's title and possession and the same cannot be granted based on the Advocate Commissioner report. The 1st respondent/plaintiff ought to have proved his case independently and not by collecting evidence through the Advocate Commissioner and his report. Therefore, the appointment of Advocate Commissioner is perverse. He further submitted that in the plaint copy, the 1st respondent/plaintiff stated about filing of O.S.No.89 of 2023 by the petitioner herein before the learned Principal District Munsif, Thirukovilur. But not disclosed the details of 1st respondent filing I.A.No.584 of 2023 in O.S.No.89 of 2023 for same relief of appointment of Advocate Commissioner which is still pending before the learned Principal District Munsif, Thirukovilur.

3.He further submitted that I.A.No.584 of 2023 in O.S.No.89 of 2023 came up for hearing on 19.04.2024, thereafter it was adjourned to 22.04.2024 and 24.04.2024. After summer vacation, the case adjourned to 05.06.2024. In the meanwhile, the present I.A.No.264 of 2024 in O.S.No.129 of 2024 filed on the premise that on 20.04.2024, the petitioner said to have attempted to cut down trees and clear the place by trespassing



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into the suit property which the 1st respondent/plaintiff successfully averted and thereafter the 1st respondent as plaintiff filed present suit and interim application for Advocate Commissioner appointment. On the last working day before summer vacation *i.e.*, on 30.04.2024, the 1st respondent/plaintiff filed the suit, moved interim application and obtained exparte order which is by suppression of fact nothing but Forum Shopping. The lower Court without ascertaining status of earlier suit and without finding whether any petition for similar prayer pending, had passed impugned order.

4.In support of his submissions, the learned counsel for the petitioner/1st defendant produced the plaint copy in O.S.No.89 of 2023 and O.S.No.129 of 2024 and the interim applications in I.A.No.584 of 2023 in O.S.No.89 of 2023 and I.A.No.264 of 2024 in O.S.No.129 of 2024.

5.Considering the submissions and on perusal of the materials, it is seen that the suit property in both O.S.Nos.89 of 2023 & 129 of 2024 are one and the same and the parties are one and the same. O.S.No.89 of 2023 is pending before the learned Principal District Munsif, Thirukovilur and



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O.S.No.129 of 2024 is pending before the Subordinate Judge, Thirukovilur.

The petitioner herein is the plaintiff in O.S.No.89 of 2023, the defendant who is the 1st respondent herein filed I.A.No.584 of 2023 and the same is at the stage of enquiry. I.A.No.584 of 2023 listed on 22.04.2024 and 24.04.2024. After summer vacation, it adjourned to 05.06.2024. In the present case, O.S.No.129 of 2024, the appointment of Advocate Commissioner in I.A.No.264 of 2024 considered and impugned order passed on the same day of filing of the interim application *i.e.*, on 30.04.2024 in an emergent manner. In I.A.No.264 of 2024, the cause of action is on 20.04.2024. If any such protection required, the 1st respondent/plaintiff could have taken necessary steps in O.S.No.89 of 2023. On the other hand, the 1st respondent/plaintiff filed the present suit in O.S.No.129 of 2024 before the learned Subordinate Judge, Thirukovilur and also filed I.A.No.264 of 2024 for appointment of Advocate Commissioner.

6.Though in the plaint in O.S.No.129 of 2024 the 1st respondent/plaintiff mentioned about pendency of the suit in O.S.No.89 of 2023, there is no mention in the affidavit and in the impugned order about the pendency of I.A.No.584 of 2023 in O.S.No.89 of 2023. Added to it, the lower Court failed to give any reason for urgency in passing impugned order



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on the date of filing of the interim application *i.e.*, on 30.04.2024.

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7.In view of the above, this Court finds that the impugned order obtained on suppression of facts and for other reasons. In any event, the impugned order is perverse, not sustainable.

8.In the result, the impugned order, dated 30.04.2024 in I.A.No.264 of 2024 in O.S.No.129 of 2024 passed by the learned Subordinate Judge, Thirukovilur is set aside.

9.The learned Subordinate Judge, Thirukovilur is directed to hear the interim application in I.A.No.264 of 2024 in O.S.No.129 of 2024 a fresh, consider the objection of the petitioner/1st defendant and consider the other suit in O.S.No.89 of 2023 and I.A.No.584 of 2023 pending for similar relief before the learned Principal District Munsif, Thirukovilur.

10.With the above directions, this civil revision petition stands disposed of. Consequently, connected civil miscellaneous petition is closed.
No costs.



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Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

Index : Yes/No

Internet : Yes

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To

The Subordinate Judge,
Thirukovilur.



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M.NIRMAL KUMAR, J.

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