



C.R.P.No.3791 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2024

CORAM

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.R.P.(PD)No.3791 of 2022

and

C.M.P.No.19984 of 2022

Murugesan

...Petitioner/Petitioner/Plaintiff

-Vs-

Veeramuthu

...Respondent/Respondent/Defendant

Prayer:- Civil Revision Petition has been filed under Article 227 of the Constitution of India, against order dated 06.08.2022 made in I.A.No.3 of 2021 in O.S.No.221 of 2020 on the file of learned Principal District Munsiff, Attur, may be set aside.

For Petitioner : Mr.Krishna Ravindran
for M/s.A.Charles Darwin

For Respondent : Mr.D.Shivakumaran

ORDER

This Civil Revision Petition has been filed to set aside the impugned order dated 06.08.2022 made in I.A.No.3 of 2021 in O.S.No.221 of 2020 on the



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file of the learned Principal District Munsif, Attur, wherein the respondent herein has filed a petition for appointment of Advocate Commissioner to note down the physical features. The said petition was allowed. As against the said order, the respondent therein has filed this Civil Revision Petition.

2. According to the petitioner, he filed a suit in O.S.No.221 of 2020 on the file of the learned Principal District Munsif, Attur for the relief of permanent injunction and the property belongs to the plaintiff through his predecessors and he is in possession of the property from the year 2012. Since the respondent/defendant attempted to interfere with the petitioner/plaintiff peaceful possession and enjoyment, he filed main suit. There is no dispute in respect of identification of property. While so, the respondent/defendant filed a petition for appointment of Advocate Commissioner for collection of evidence, but the trial Court allowed the petition and appointed the Advocate Commissioner and the Advocate Commissioner has not inspected the property so far.

3. According to the respondent, the plaintiff has filed a suit property for the relief of permanent injunction in respect of the property in S.No.128/2 to the extent of 0.30.0 hectares alleging that the entire property belonging to the



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petitioner. In fact, the respondent purchased the property on 18.02.1976. While so, the petitioner herein filed a suit for entire property and he is not in possession of the entire property. In fact, the plaintiff pleaded that the respondent attempted to alter the bund and thereby filed a petition for appointment of Advocate Commissioner to note down the physical features of the suit property. The trial Court after taking into consideration on the facts of the case correctly allowed the petition by appointing Advocate Commissioner.

4. The learned counsel for the petitioner/plaintiff would contend the suit is filed for permanent injunction as against the respondent/defendant. In the said suit, the respondent has filed a counter stating that they purchased western side of the suit property through sale deed in the year 1976 and they claim right over the property. In the meantime, the respondent filed a petition for appointment of Advocate Commissioner stating that he purchased the property in the western side and he is in possession of the property. Therefore, the appointment of Advocate Commissioner is not for note down the physical features only to collect evidence and the appointment of Advocate Commissioner is no way helpful to decide the case. The commission petition has no valid reason for appointment of Advocate Commissioner. There is no dispute in respect of identification of the suit property and appointment of Advocate Commissioner



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is only to collect evidence and to delay the proceedings. But the trial Court without considering the same appointed an Advocate Commissioner.

5. The learned counsel appearing for the respondent would contend that the plaintiff filed a suit for bare injunction by stating that the respondent attempted to destroy the bund available in the property. In fact, the respondent purchased the property of the western side in S.No.128/2 and the plaintiff/petitioner is not in possession and enjoyment of the property and to note down the physical features, the appointment of Advocate Commissioner is necessary. The trial Court after careful consideration of facts and circumstances of the case allowed the petition. Therefore, the present petition is liable to be dismissed.

6. This Court heard both sides and perused the materials available on record.

7. According to the petitioner, he filed the suit for permanent injunction based on the documents. There is no dispute in respect of the identification of the property. The respondent/defendant filed a petition for appointment of Advocate Commissioner to gather evidence in his favour. The plaintiff himself



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has not taken any steps for appointment of Advocate Commissioner, but in order to delay the proceedings and to collect evidence the respondent/defendant filed this petition.

8. According to the respondent, the plaintiff pleaded in the plaint that the respondent attempted to alter the bund and thereby the cause of action arose. While so, the respondents being the defendants filed a commission petition only to note down the physical features and not for collection of evidence. The respondent being the defendant filed a petition and the trial Court appointed an Advocate Commissioner.

9. This Court carefully perused the record, the plaintiff has filed the suit for permanent injunction as against the defendants. There is no dispute in respect of identification of the property. Both the parties are claiming title over the properties. Therefore, both the parties can produce the documents and adduce oral evidence and to prove their case. The respondent herein being the defendant filed a petition for appointment of Advocate Commissioner to note down the physical features of the property and the same was allowed by the trial Court. In the suit for permanent injunction, when there is no dispute in respect of identification of the property, the appointment of Advocate Commissioner is



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not required. Though the plaintiff pleaded in the plaint that the defendant attempted to alter the bund, he has not taken any steps for appointment of Advocate Commissioner. Per contra, the defendant filed a petition for appointment of Advocate Commissioner and the same was allowed and the plaintiff challenged the same through this petition. In this case, the petitioner being the plaintiff vehemently opposed to appoint the Advocate Commissioner and mere noting down the properties will not serve the purpose of suit and the suit can be disposed of with available documents and oral evidence. Since there is no dispute in respect of identification and no any damages caused to the suit property, the appointment of Advocate Commissioner is not necessary in this case. Therefore, the appointment of Advocate Commissioner to note down the physical features is no way helpful to decide the case of the plaintiff. But the trial Court without considering the said aspects allowed the petition. Hence, the appointment of Advocate of Commissioner is liable to be set aside.

10. In the result, this Civil Revision Petition is allowed and the order passed in I.A.No.3 of 2021 in O.S.No.221 of 2020 dated 06.05.2022 is set aside, and the petition is dismissed. The connected Miscellaneous Petition is closed.

11. Considering the long pending of the suit, the trial Court is directed to



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dispose the case within a period of six months from the date of receipt of a copy
of this order.

15.04.2024

Index : Yes/No
Speaking order/Non-speaking order
Neutral Citation: Yes/No
rjr

To

The learned Principal District Munsif,
Attur



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P.DHANABAL, J

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