



C.R.P.No.4751 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.01.2024

Coram:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.R.P.No.4751 of 2023
and
C.M.P.No.28199 of 2023

S.Gopalamoorthi

.. Petitioner

/versus/

1.K.Ramasamy
2.S.Ganesamoorthi
3.V.Moorthi
4.S.Manoharan

.. Respondents

Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the order made in I.A.No.3 of 2023 in O.S.No.22 of 2023 dated 09.10.2023 on the file of the District Munsif cum Judicial Magistrate Kodumudi.

For Petitioner :Mr.P.Muthukumarasaamy

ORDER

Civil Revision Petition has been filed praying to set aside the order made in I.A.No.3 of 2023 in O.S.No.22 of 2023, dated 09.10.2023 on the file of the District Munsif cum Judicial Magistrate Kodumudi.



2. The learned counsel appearing for the petitioner submitted that the first respondent/plaintiff filed a suit in O.S.No.22 of 2023 against the petitioner/1st defendant on the file of the District Munsif cum Judicial Magistrate, Kodumudi with the following prayers:-

(a)granting a permanent injunction restraining the first defendant from preventing the plaintiff from irrigating his lands from the suit well as per his share using the electricity motor pump set installed in the suit well as well as the underground pipeline runs through the lands of the defendants;

(b)directing the 1st defendant to pay the cost of the suit to the plaintiff.

3. Pending suit, an application in I.A.No.3 of 2023 has been filed by the first respondent/plaintiff to appoint an Advocate Commissioner to note down the physical feature of the suit property, whether any underground pipeline has been installed to draw water in the common well situated at R.S.No.106/3 to the defendants land in R.S.Nos.106/8, 106/9, 106/10, 106/11, 106/13 & 106/16 for the purpose of irrigation and the same was allowed by the trial Court on 09.10.2023, against which, the present petition has been filed.



WEB COPY

4. The learned counsel appearing for the petitioner contended that it is observed in the impugned order to collect evidence with regard to the disputed contention, which is not permissible. Therefore, the Advocate Commissioner cannot be permitted to collect the evidence and he can be permitted to note down the physical feature of the suit property. Under these circumstances, he filed this Civil Revision Petition challenging the impugned order dated 09.10.2023.

5. I considered the argument made by the learned counsel appearing for the petitioner and perused the materials available on record.

6. On perusal of the records, the facts reveal that the petitioner is the first defendant and the 1st respondent is the plaintiff in O.S.No.22 of 2023, on the file of the District Munsif cum Judicial Magistrate, Kodumudi which was filed for permanent injunction. Further, it is noted that in the suit, the plaintiff/first respondent herein had claimed that for more than 55 years, there was an underground cement pipeline laid starting from the common well situated in R.S.No.106/3 and running through the land of the defendants. In these circumstances, since the defendants disputed the



underlying pipeline in his property, the plaintiff filed an application in I.A.No.3 of 2023 to appoint the Advocate Commissioner to note down the physical feature and to find out whether any pipeline has been running from R.S.No.106/3 to R.S.Nos.106/8, 106/9, 106/10, 106/11, 106/13 and 106/16 for irrigation purpose to the plaintiff's/first respondent land in R.S.No.106/18. In order to find out the physical feature as claimed by the plaintiff, the trial Court appointed the Advocate Commissioner and directed to inspect and file the physical feature of the disputed land and find out whether the underground pipeline has been running through the land of the petitioner to the 1st respondent's lands. In order to adjudicate the claim of the plaintiff whether any pipeline is running under the land of the petitioner/1st defendant from the well situated in R.S.No.106/3 to plaintiff/1st respondent land, the Advocate Commissioner report is required. Hence, the trial Court has rightly allowed the petition by passing the impugned order. Therefore, I find no valid reason to interfere with the order of the trial Court and there is no merit in the Civil Revision Petition.



C.R.P.No.4751 of 2023

7. Hence, this Civil Revision Petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

WEB COPY

03.01.2024

Index:yes/no

Speaking order/non speaking order

Neutral Citation:yes/no

ari

To:

The District Munsif cum Judicial Magistrate Kodumudi.



WEB COPY



C.R.P.No.4751 of 2023

V.SIVAGNANAM,J.

ari

C.R.P.No.4751 of 2023
and
C.M.P.No.28199 of 2023

03.01.2024