

Mr.S.Ramanathan Vs. Tmt.Malathi

Mr.S.Ramanathan Vs. Tmt.Malathi

SooperKanoon Citation : sooperkanoon.com/965823

Court : Chennai

Decided On : Jan-07-2013

Judge : G.Rajasuria

Appellant : Mr.S.Ramanathan

Respondent : Tmt.Malathi

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

07. 01/2013 CORAM THE HONOURABLE MR.JUSTICE G.RAJASURIA C.R.P.(PD)(MD)No.2638 of 2012 and M.P.(MD)No.1 of 2012 Mr.S.Ramanathan ... Petitioner/Petitioner/ Defendant Vs. Tmt.Malathi ... Respondent/Respondent/ Plaintiff Prayer Petition filed under Article 227 of the Constitution of India, to set aside the order and decree passed by the Sub Court, Ramanathapuram, made in I.A.No.456 of 2012 in O.S.No.3 of 2010, dated 27.09.2012 !For Petitioner ... Mr.M.Thirunavukkarasu ^For Respondent ... Mr.C.Palanivelrajan * * * * * :ORDER This Civil Revision Petition has been filed to get set aside the order dated 27.09.2012 passed in I.A.No.456 of 2012 in O.S.No.3 of 2010, by the learned Subordinate Judge, Ramanathapuram.

2. Heard both sides.

3. A recapitulation and re'sume' of facts absolutely necessary and germane for the disposal of this Civil Revision Petition would run thus: The revision petitioner

herein, being the defendant in the suit O.S.No.3 of 2010 filed by the plaintiff for recovery of possession of the suit property, being an agricultural land measuring an extent of one Acre and 74 Cents, sought for an appointment of an Advocate Commissioner to visit the suit property, measure the same and note down the physical features. Whereupon the lower Court, after hearing both sides, dismissed it, as the appointment of Advocate Commissioner was unnecessary.

4. Being aggrieved by and dissatisfied with the order passed by the lower Court, this Civil Revision Petition has been focussed on various grounds.

5. The learned Counsel for the revision petitioner placing reliance on the grounds of revision petition would pyramid his arguments, which could succinctly and precisely be set out thus: The suit itself is filed by the respondent/plaintiff for declaration and recovery of possession of the suit property; whereas in the suit property, there is a hut put up by the defendant, but that was suppressed deliberately by the plaintiff. Over and above that, one of the eastern boundaries in the suit property has been cited as cart track, whereas no such cart track forms one of the boundaries for the suit property. If the application filed by the defendant is allowed and the Advocate Commissioner is appointed, everything will come to lime light and solve the problem.

6. Whereas the learned Counsel for the respondent/plaintiff, in a bid to torpedo and pulverise the arguments as put forth and set forth on the side of the revision petitioner/defendant, would advance his arguments, which could pithily and precisely be set out thus: The written statement is silent as silence could be and there is no whisper about the boundary dispute and in such a case, holus bolus when the suit was at the trial stage and that too, when the cross-examination of P.W.1 was over due, the question of appointment of an Advocate Commissioner did not arise at all and such a prayer was for further protraction of the matter and absolutely, there is no illegality or perversity in the order passed by the lower Court warranting interference in this Civil Revision Petition.

7. The point for consideration is as to whether the appointment of an Advocate Commissioner as prayed for, is absolutely necessary or not? The Point:

8. A mere running of the eye over the records and also considering the submissions on either side, I am of the view that the defendant herein has come forward boldly to get an Advocate Commissioner appointed so as to bring to lime light to the facts involved in this case. There is no knowing of the fact as to why the plaintiff should shun such appointment of an Advocate Commissioner.

9. Here, the case of the defendant is that there is a hut in the suit property. However, in the plaint, there is no such reference. Over and above that, the defendant also would try to put forth the case to the effect that the astern boundary of the suit property is not a cart track. In such a case, if the Advocate Commissioner visits the suit property and locates the same and measures it with reference to the Survey Number and the documents and also notes down the physical features, unnecessary adducing of oral evidence could be avoided.

10. The learned Counsel for the respondent/plaintiff would raise a doubt that the Advocate Commissioner might be misused by the defendant for culling out and fishing out evidence in support of his false plea.

11. I would like to dispel such apprehension in the mind of the plaintiff by pointing out that the Advocate Commissioner cannot be misused by any one of the parties for culling out or fishing out the evidence in respect of their respective pleas.

12. As such, I am of the view that the appointment of an Advocate Commissioner would enable the Court to render its judgment on an even heel. Whereas the lower Court failed to take into consideration these salient features and dismissed the I.A. warranting interference in this Civil Revision Petition.

13. I recollect the adage that a picture is worth a thousand words and the sketch of the Advocate Commissioner supported by his report would further the course of justice.

14. Wherefore, the order passed by the lower Court in I.A.No.456 of 2012 in O.S.No.3 of 2010 is set aside and the lower Court is mandated to appoint an Advocate Commissioner to visit the suit property and measure the same with the help of a qualified Surveyor by referring to the survey maps and the documents

and note down the physical features and submit his report along with a sketch. Accordingly, the lower Court shall do well to see that the matter is disposed of within a period of four months from the date of receipt of a copy of this order. The point is answered accordingly.

15. On balance, this Civil Revision Petition is allowed as above. Consequently, the connected Miscellaneous Petition is closed. No costs. ss! To The Court of Subordinate Judge, Ramanathapuram.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com