

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)Nos.4459 & 4460 of 2014 &

M.P.No.1 of 2014 in

C.R.P.(NPD)No.4459 of 2014

K.Premsekar

... Petitioner in both CRPs

v.

S.Duraisamy

... Respondent in both CRPs

Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 16.12.2013 in C.M.P.Nos. 884 and 885 of 2013 in A.S.No.169 of 2012 passed by the learned III Additional Judge,City Civil Court, Chennai.

For Petitioner : Mr.C.M.S.UmaShankar

For Respondent : Mr.V.Manohar

COMMON ORDER

Challenging the fair and final orders passed in C.M.P.Nos. 884 and 885 of 2013 in A.S.No.169 of 2012 on the file of III Additional Judge, City Civil Court, Chennai, the plaintiff in O.S.No.8565 of 2009 on the file of XV Assistant Judge, City Civil Court, Chennai has filed the above Civil Revision Petitions.

2. The Suit in O.S.No.8565 of 2009 was filed by the plaintiff for permanent injunction.

3. After contest, the suit was dismissed by the Trial Court.

4. Aggrieved over the judgment and decree passed by the Trial Court, the plaintiff preferred an appeal in A.S.No.169 of 2012. In the appeal, the plaintiff took out a petition in C.M.P.No.884 of 2013 seeking for appointment of an Advocate Commissioner to note down the physical features and C.M.P.No. 885 of 2013 to implead some third parties as respondents 2 to 10 in the appeal.

5. C.M.P.No.884 of 2013 has been filed by the petitioner seeking for appointment of an Advocate Commissioner to note down the physical

features. Admittedly, the suit has been filed by the plaintiff for permanent injunction. It is also admitted that the plaintiff has not filed any application seeking for appointment of an Advocate Commissioner before the Trial court.

6. In a suit for permanent injunction, the only issue that has to be decided is with regard to possession of the suit property. It is settled position that an Advocate Commissioner cannot give a finding with regard to the possession of the parties. That apart, the party cannot collect evidence through the Advocate Commissioner to prove his case. The case of the plaintiff should be established by adducing oral and documentary evidences and not through the Advocate Commissioner. Hence, the Lower Appellate Court has rightly dismissed the application C.M.P.No.884 of 2013

7. In so far as C.M.P.No.885 of 2013 is concerned, according to the petitioner, the proposed parties are also aggrieved over the act of the respondent-defendant and therefore, they are proper and necessary parties for proper adjudication of the appeal. It is pertinent to note that when the proposed parties are aggrieved by the act of the defendant, they could have filed a separate suit as against the defendant. The plaintiff cannot prosecute the matter on behalf of the proposed parties. The learned counsel appearing for the petitioner submitted that the proposed parties are relatives of the petitioner and therefore, they are also aggrieved over the act of the

defendant.

8. As already stated, if the proposed parties are really aggrieved, they should have filed a separate suit or they should have got themselves impleaded in the suit and contested the suit before the Trial Court. At the appellate stage, at the instance of the plaintiff, the proposed parties, who are said to be the affected parties, cannot be impleaded. Hence, the Lower Appellate Court has rightly dismissed the application in C.M.P.No.885 of 2013

9. In these circumstances, I do not find any reason to interfere with the order passed by the Lower Appellate Court. The Civil Revision Petitions are devoid of merits and are liable to be dismissed. Accordingly, the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Index : Yes/No

15.12.2015

Rj

To

The III Additional Judge,
City Civil Court,
Chennai.

M. DURAISWAMY,J.,

Rj

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