

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.1360 of 2015

and M.P.No.1 of 2015

M. Kalimuthu

.... Petitioner

vs

S. Sundaram

.... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 22.12.2014 in I.A.No.789 of 2014 in O.S.No.872 of 2011 on the file of the learned III Additional District Munsif, Coimbatore.

For Petitioner	:	Dr.C.V. Ravichandran
For respondent	:	Mr.V. Anandhamurthy

ORDER

Challenging the fair and final order passed in I.A.No.789 of 2014 in O.S.No.872 of 2011 on the file of the learned III Additional District Munsif, Coimbatore, the plaintiff has filed the above Civil Revision Petition.

2. The plaintiff filed a suit in O.S.No.872 of 2011 to declare that the Will dated 19.5.1978 is generalise and binding on the plaintiff and the defendant and for permanent injunction. The defendant filed his written statement and is contesting the suit.

3. After completion of the trial, when the suit was posted for arguments, the plaintiff filed an application in I.A.No.789 of 2014, seeking for appointment of an Advocate Commissioner to measure the entire field in S.F.No.473, said to have been in possession of the respondent/defendant and S.F.No.481 & 463/3 in Mavuthampathi Vilage, as per the title documents of the respective parties, with the help of the qualified Taluk Surveyor to know whether any party to this proceedings is in possession of excess land than to their entitlement.

4. The defendant filed his counter and contested the application. The trial court, after taking into consideration the case of the parties, dismissed the application.

5. It is settled position that an Advocate Commissioner cannot give finding with regard to the possession of the property. That apart, an Advocate Commissioner cannot be appointed to collect evidence on behalf of the parties.

6. In the case on hand, the plaintiff has sought for appointment of an Advocate Commissioner for the purpose of ascertaining the possession of the property. In these circumstances, the application, filed by the petitioner, is against the settled preposition laid down by the Apex Court as well as this Court.

7. In these circumstances, the trial court has rightly dismissed the application. I do not find any error or irregularity in the order passed by the trial court in I.A.No.789 of 2014 in O.S No.872 of

2011 and hence the civil revision petition is liable to be dismissed as devoid of merits. Accordingly, the civil revision petition is dismissed. No costs. Consequently, connected MP is closed.

20-04-2015

sr

Index:no
website:yes

To

The III Additional District Munsif, Coimbatore

M. DURAISWAMY,J.,

C.R.P.(PD)No.1360/2015

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