

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.04.2015

CORAM

THE HON'BLE MR. JUSTICE M.DURAISWAMY

C.R.P.(PD) No. 1385 of 2015 &
M.P.No.1 of 2015

J.Thomson

... Petitioner/Defendant

.. Vs ..

Stephen

... Respondent/Plaintiff

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decretal order of I.A.No.663/2014 in O.S.No.53/2012 dated 29.10.2014, passed by the learned Subordinate Judge, at Poonamallee.

For Petitioner : Mrs.G.V.Shoba
For Respondent : Mr.P.Jageesan

O R D E R

Challenging the fair and final order passed in I.A.No.663 of 2014 in O.S.No.53 of 2012, on the file of Sub Court, Poonamallee, the defendant has filed the above Civil Revision Petition.

2.The plaintiff filed a Suit in O.S.No.53 of 2012, for declaration, injunction and for recovery of possession. In the said Suit, the defendant has filed an Application in I.A.No.152 of 2012, seeking for appointment of an Advocate Commissioner to note down the physical features. The trial Court appointed Advocate Commissioner and the Advocate Commissioner has also filed his report before the trial Court.

3.The learned counsel appearing for the Revision Petitioner submitted that the defendant has filed his objections to the Advocate Commissioner's report. Thereafter, the defendant took out an Application in I.A.No.663 of 2014, in I.A.No.152 of 2012, to re-issue the warrant of Commission to the Advocate Commissioner to re-visit the suit property by the Advocate Commissioner with the help of the District Surveyor. The trial Court after taking into consideration of the case of both the parties, dismissed the Application stating that the Advocate Commissioner had already filed his report with the assistance of the Taluk Surveyor and there is no necessity for measuring the property with the assistance of District Surveyor.

4.It is a settled position that the burden of proof lies only on the plaintiff to establish his case by oral and documentary evidence. It is also a settled position that the parties cannot collect evidence through Advocate Commissioner. When the Advocate Commissioner has filed his report taking the assistance of the Taluk Surveyor, I am of the view that there is no necessity for taking the assistance of the District Surveyor and measuring the property once again. When the defendant has filed his objection to the Advocate Commissioner, the trial Court shall consider the same at the time of deciding the Suit.

5.In these circumstances, I do not find any error or irregularity in the order passed by the trial Court and the Civil Revision Petition is devoid of merits and the same is dismissed. However, the trial Court is directed to take into consideration the objections filed by the defendant to the Advocate Commissioner while deciding the Suit.

6.The learned counsel appearing for the respondent submits that the trial Court had commenced the trial of the Suit and therefore a time limit may be fixed for the disposal of the same.

7.Having regard to the submission of the learned counsel for the petitioner, I direct the Sub-Judge, Poonamallee, dispose of the Suit in O.S.No.53 of 2012 on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

The Civil Revision Petition is dismissed with the above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rpa

To

1.The Subordinate Judge, at Poonamallee.

+1cc to Mr.P.Jagadeesan, Advocate, S.R.No.19076

+1cc to Mr.R.Augustine, Advocate, S.R.No.19087

SV(CO)

CA(09/04/2015)

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