

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. 1392 of 2015 &
M.P.No.1 of 2015

B.V.Anantha Rao .. Petitioner/Defendant
.. Vs ..

Byrappa .. Respondent/Plaintiff

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and final order passed in I.A.No.33 of 2015 in O.S.No.40 of 2010 on the file of the Subordinate Court, Hosur at Krishnagiri.

For Petitioner : Mr.R.Jayaprakash

O R D E R

Aggrieved over the fair and final order passed in I.A.No.33 of 2015 in O.S.No.40 of 2010, on the file of Sub Court, Hosur, the defendant has filed the above Civil Revision Petition.

2.The plaintiff filed a Suit in O.S.No.40 of 2010, for specific performance. When the said Suit was taken up for trial, the defendant filed an Application in I.A.No.33 of 2015, seeking for appointment of an Advocate Commissioner to note down the boundaries as per sale deed dated 28.5.1969 and also as per the suit sale agreement dated 03.05.2008. The said Application was opposed by the plaintiff by stating that filing of the Application by the defendant seeking appointment of Advocate Commissioner amounts to gathering of evidence through Advocate Commissioner. The trial Court after taking into consideration of the case of both parties, dismissed the Application, finding that there is no necessity for appointment of Advocate Commissioner in the Suit for specific performance.

3.On a perusal of the materials available on record, it could be seen that the **Plaintiff*** contended that the properties mentioned in the sale deed 28.5.1969 and the property mentioned in the Suit Sale Agreement dated 03.05.2008 are different. When the defendant has taken such a stand before the trial Court, the burden of proof lies only on the plaintiff to establish his case by oral and documentary evidence. The defendant cannot collect evidence

through Advocate Commissioner. That apart, in a Suit for specific performance, the appointment of Advocate Commissioner is totally unwarranted. The trial Court taking into consideration of these aspects rightly dismissed the Application and I do not find any error or irregularity on the order passed by the trial Court

Accordingly, the Civil Revision Petition is devoid of merits and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-II)
Dt. 13.04.2015

Amended as per order dated 05.06.2015
in CRP (PD) No. 1392 of 2015 & MP.No.1 of 2015

//True Copy//

Sd/-
Assistant Registrar (CS-II)
dt. 10.06.2015

Sub Assistant Registrar

rpa

To

1. The Subordinate Judge,
Hosur at Krishnagiri.

To be Substituted to the order
already despatched on 11.03.15

1 cc to Mr. R. Jayaprakash,
Advocate, **SR.No.27108***

C.R.P. (PD) No. 1392 of 2015

kk(co)
pmk.16.4.2015
Eu 10.06.2015

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