

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.1601 of 2015 &  
M.P.No.1 of 2015

K.Veeramarudu Pandian

... Petitioner

v.

T.Yogaraj

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 12.01.2015 made in I.A.No.1118 of 2014 in O.S.No. 204 of 2012 on the file of learned District Munsif Court, Ponneri.

For Petitioner : Mr.M.Madhu Prakash

**ORDER**

Challenging the fair and final order passed in I.A.No.1118 of 2014 in O.S.No. 204 of 2012 on the file of District Munsif Court, Ponneri. the defendant has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No. 204 of 2012 for permanent injunction. The defendant filed his written statement and is contesting the suit. Subsequently, the defendant took out an application in I.A.No.1118 of 2012 under Order 26 Rule 9 of CPC seeking for an appointment of Advocate Commissioner to identify, measure and to note down the physical features of the suit property. The plaintiff contested the application on various grounds. The Trial Court, after taking into consideration the case of both the parties, dismissed the application finding that there is no dispute with regard to the identity of the property.

3. On a perusal of the written statement filed by the defendant it is clear that the defendant has not disputed the identity of the property and in paragraph No.5 of the written statement he has only disputed the Survey numbers of the suit property. While so, the Advocate Commissioner, cannot find out in which survey number the suit property lies. That apart, the Advocate Commissioner cannot collect evidence on behalf of the parties. It is for the parties, to establish their case by oral and documentary evidences.

4. In the case on hand, the revision petitioner is the defendant in the suit. While so, the defendant has raised a dispute with regard to the suit survey numbers, when the burden of proof lies on the plaintiff to establish his

case by oral and documentary evidences. In these circumstances, the trial court has rightly dismissed the application.

5. Therefore, I do not find any error or irregularity in the order passed by the Execution Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

23.04.2015

Index : No  
Internet : Yes

Rj

To

The District Munsif Court,  
Ponneri.

M. DURAISWAMY,J.,

Rj

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