

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.1785 of 2015 &
M.P.No.1 of 2015

Palaniammal

... Petitioner

v.

1.A.Manickam
2.Kalidas
3.A.Karuppusamy

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 06.03.2015 made in I.A.No.25 of 2015 in O.S.No.1515 of 2013 on the file of IV Additional Subordinate Judge, Coimbatore.

For Petitioner : Mr.S.Jayaseelan

O R D E R

Aggrieved over the fair and final order passed in I.A.No.25 of 2015 in O.S.No.1515 of 2013 on the file of IV Additional Subordinate Court, Coimbatore, the 1st defendant has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.1515 of 2013 for permanent injunction. The said suit is being contested by the defendants on various grounds. The defendants filed an application in I.A.No.25 of 2015 in O.S.No.1515 of 2013 seeking for appointment of an Advocate Commissioner to visit and to investigate the 1st defendant's property as mentioned in O.S.No.1515 of 2013 on the file of Sub Court, Coimbatore with revenue records and measure the properties and file a report. The said application was contested by the plaintiff. The suit was subsequently amended by including the prayer for declaration.

3. The Trial Court, after taking into consideration the case of both the parties, dismissed the application finding that in a suit for bare injunction, there is no necessity for appointing the Advocate Commissioner.

4. It is settled position that the burden of proof lies only on the plaintiff. When the defendants have raised their defences in the written

statement, it is for the plaintiff to establish his case by oral and documentary evidences.

5. In the case on hand, when the plaintiff has not filed any application before the Trial Court for appointment of Advocate Commissioner, there is no necessity for the defendants to file such an application before the Trial Court. That apart so far as the prayer for interim injunction is concerned, the issue that has to be decided is with regard to possession of the property. It cannot be disputed that the Advocate Commissioner cannot give finding with regard to the possession of the properties. In these circumstances, the Trial Court has rightly dismissed the application filed by the first defendant-petitioner.

6. In view of the above, I do not find any error or irregularity in the order passed by the trial court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

03.06.2015

Index : No
Internet : Yes
Rj

To

The IV Additional Subordinate Court,
Coimbatore

M. DURAISWAMY,J.,

Rj

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