

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.2065 of 2015
and M.P.No.1 of 2015

1.Muthamil Selvam
2.Manivannan

.. Petitioners/Defendants

Vs.

Alagappan Udayar

.. Respondent/Plaintiff

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 17.02.2015 made in I.A.No.2021 of 2014 in O.S.No.549 of 2014 on the file of the District Munsif Court, Perambalur.

For Petitioners : Mr.C.Selvaraj senior counsel
for M/S.C.S.Associates

For Respondent : Mr.T.Murugamanickam

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 17.02.2015 made in I.A.No.2021 of 2014 in O.S.No.549 of 2014 on the file of the District Munsif Court, Perambalur.

2.The respondent herein as a plaintiff filed a suit for bare injunction stating that he has purchased 0.36 cents under the registered sale deed dated 04.01.1967 in S.No.177/16 and also he is in possession of the same. Since the defendants are attempted to interfere with his peaceful possession and enjoyment of the suit property, he has filed the suit along with an application in I.A.No.2021 of 2014 for appointment of Advocate Commissioner. The trial Court after hearing both sides, allowed the application, against which, the present revision petition has been preferred by the defendants/petitioners.

3.Learned counsel for the petitioners submits that the extent of the suit property is only 33 cents, but the respondent/plaintiff has filed the suit stating that he is in possession and enjoyment of 36 cents. Since the respondent/plaintiff has filed the suit for bare injunction, he cannot collect evidence by appointment of Advocate Commissioner. But the trial Court has failed to consider that in the suit for bare injunction, no Commissioner was appointed to note down the physical features of the suit property. Therefore, he prayed for allowing the revision petition.

4. Resisting the same, learned counsel for the respondent/plaintiff submits that the sale deed now filed by the revision petitioners is not yet marked and that cannot be looked into. He has not filed an application for appointment of Advocate Commissioner to collect evidence. If the petitioners/defendants would trespass into the suit property and change its physical features, appointment of Advocate Commissioner is necessary to note down the physical features. That factum was rightly considered by the trial Court. Hence, he prayed for dismissal of the revision petition.

5. Considered the rival submissions made on both sides and perused the typed set of papers.

6. The respondent herein as a plaintiff filed the suit for bare injunction stating that he purchased 33 cents out of 36 cents with the stated boundaries under the registered sale deed dated 04.01.1967 from one Inikkati Udayar. So the sale deed relied upon by the revision petitioners was admitted by the respondent/plaintiff in his plaint itself. But in the description of the suit property, it was stated as follows:

“In Perambalur District, Alathur Taluk, and Ariyalur R.Sub District in Malamathur Village, SF

No.177/16 Punja Land measuring acre 0.36 cents New
Patta No.104"

7.Under the aforesaid circumstances, whether the respondent/plaintiff is in possession of 0.36 cents or 0.33 cents to be decided only at the time of trial. The only point to be decided is that whether appointment of Advocate Commissioner is necessary? It is appropriate to extract para-3 of the affidavit filed in support of the application, which runs as follows:

"3. . . . The Respondent's/Defendant's may at moment trespass in the suit property by destroying the fence and also would cause dangers to the septic tank, straw heap and banana trees and thereby he may change the nature of the physical features of the suit property, and it is absolutely necessary the interest of justice to appoint an Advocate Commissioner to make a local inspection of suit properties to note the physical features of the same, we will be seriously prejudiced and put to irreparable loss. If an Advocate Commissioner is appointed much of oral evidence can be avoided."

The above para clearly shows that the respondent/plaintiff has filed the application only to collect the material evidence to prove his possession.

8.It is well settled dictum of the Apex Court that no Commissioner was appointed for collecting evidence. It is the duty of the respondent/plaintiff to prove his case by letting oral and documentary evidence. But that factum was not considered by the trial Court. Hence, I am of the view, the trial Court has erroneously allowed the application for appointment of Advocate Commissioner to collect evidence. So the order passed by the trial Court in I.A.No.2021 of 2014 is hereby set aside and this revision petition is allowed.

9.In fine, the Civil Revision Petition is allowed by setting aside the order passed by the trial Court in I.A.No.2021 of 2014. No costs. Consequently, connected Miscellaneous Petition is closed.

13.07.2015

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To

The District Munsif Court, Perambalur.

R.MALA,J.

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