

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.12.2015

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THE HONOURABLE MS. JUSTICE R.MALA

C.R.P.(PD).No.4891 of 2014
& M.P.No.1 of 2014

K.Arasakumar

.. Petitioner/Plaintiff

Versus

1.S.Kuppusami

2.K.Palanisami

3.Karuppusami

.. Respondents/Defendants

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 12.07.2011 made in I.A.No.860 of 2015 in O.S.No.140 of 2010 on the file of Sub Court, Dharapuram and to allow the same.

For Petitioner : Mr.Sundaravathanam for

Mr.B.Dyaneswaran

For Respondents : Mr.M.Guruprasad

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 12.07.2011 in I.A.No.860 of 2015 in O.S.No.140 of 2010 on the file of Sub Court, Dharapuram.

2.The revision petitioner as the plaintiff filed a suit in O.S.No.140 of 2010 for declaration to cancel the sale deed dated 03.05.2010 executed by the defendants 1 and 2 in favour of the third defendant, as a fraudulent document and also for declaration of title to the plaintiff/revision petitioner and

consequential injunction. During pendency of the suit, the plaintiff/revision petitioner filed an application in I.A.No.860 of 2010 for appointment of Advocate Commissioner to identify and measure the suit property and file a report. The trial Court, after hearing both sides, dismissed the application, against which, the present revision petition is preferred by the plaintiff/revision petitioner.

3.Challenging the impugned order, learned counsel appearing for the revision petitioner submitted that the revision petitioner/plaintiff has filed the application to appoint the Commissioner and the Commissioner was appointed and filed his report within 10 days. But the revision petitioner/plaintiff has not filed his objections. So the Trial Court dismissed the application.

4.Resisting the same, learned counsel appearing for the respondents submitted that the respondents are in possession of the property, so the appointment of Commissioner is not at all necessary. Hence, he prayed for dismissal.

5.Considering the rival submissions on made both sides and on perusal of the typed set of papers, it is seen that the revision petitioner/plaintiff has filed the suit in O.S.No.140 of 2010 for declaration to cancel the sale deed

dated 03.05.2010 executed by the defendants 1 and 2 in favour of the third defendant as a fraudulent document and also for declaration of title to the plaintiff/revision petitioner and consequential injunction. The Commissioner has filed his report along with plan, but none has filed any objection to the Commissioner's report.

6.Furthermore, on perusal of the affidavit filed by the revision petitioner/plaintiff it is not stated that the Commissioner's report to be scrapped. In the affidavit, it was stated that the Survey Number has been wrongly mentioned, so the plaintiff wants to collect the material evidence to prove his possession. It is well settled dictum of the Hon'ble Apex Court that no Commissioner has been appointed to collect the material evidence to prove the possession of the plaintiff. The plaintiff has to prove his possession by way of examining the witnesses.

7.Considering the aforestated circumstances of the case, I am of the view that without assigning any reason for scrapping earlier Commissioner's report, the revision petitioner/plaintiff has come forward with the present revision to reissue warrant is unsustainable. The trial Court has considered all the aspects in proper perspective and came to the correct conclusion. The

R.MALA,J.

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order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. Hence, Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petition is closed. Since the suit is of the year 2010, the Sub Court, Dharapuram is directed to dispose of the same, within a period of three months from the date of receipt of a copy of this order.

14.12.2015

Index : Yes / No

Internet : Yes / No

To

The Sub Court, Dharapuram.

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