

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.07.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.2540 of 2015 &
M.P.No.1 of 2015

Lakshmi

... Petitioner

v.

Seenimariammal

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order 13.11.2014 made in I.A.No.361 of 2013 in O.S.No.400 of 2008 on the file of I Additional District Munsif Court, Vridhachalam.

For Petitioner : Mrs.R.Meenal

O R D E R

Challenging the fair and final order passed in I.A.No.361 of 2013 in O.S.No.400 of 2008 on the file of I Additional District Munsif Court, Vridhachalam, the 5th defendant has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.400 of 2008 for permanent injunction. The suit was filed in the year 2008 and the 5th defendant also filed her written statement and is contesting the suit. The trial of the suit had already commenced.

3. In the year 2003, the 5th defendant took out an application in I.A.No. 361 of 2013 under Order 26, Rule 9 of CPC seeking for appointment of an Advocate Commissioner to note down the physical features with the help of Surveyor. The application was opposed by the plaintiff stating that there is no necessity for appointment of Advocate Commissioner.

4. The Trial Court, after taking into consideration the case of both the parties, dismissed the application finding that the application has been filed at a belated stage i.e., after a lapse of 5 years and that apart, there is no necessity for appointment of Advocate Commissioner in the facts and circumstances of the present case.

5. It is settled position that the parties cannot collect evidence through Advocate Commissioner. The present suit has been filed by the plaintiff for permanent injunction and therefore, the issue that has to be decided in the present suit is with regard to the possession of the properties. It is also settled position that Advocate Commissioner cannot give a finding with regard to the possession of the property. That apart, the burden of proof lies on the plaintiff and therefore, the plaintiff has to establish her case by oral and documentary evidences. In these circumstances, the present application filed after a lapse of 5 years, that too, after the commencement of the trial, was rightly dismissed by the trial Court.

6. In view of the above, I do not find any reason to interfere with 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.

Index : No
Internet : Yes

14.07.2015

Rj

To

The I Additional District Munsif Court,
Vridhachalam

M. DURAISWAMY,J.,

Rj

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