

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.07.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.2608 of 2015 &  
M.P.No.1 of 2015

Elangovan

... Petitioner

v.

1.Banumathi  
2.Rajendran

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 08.04.2015 made in I.A.No.595 of 2014 in O.S.No.103 of 2011 on the file of District Munsif, Chidambaram.

For Petitioner : Mr.Thiyagarajan

ORDER

Challenging the fair and final order passed in I.A.No.595 of 2014 in O.S.No.103 of 2011 on the file of District Munsif Court, Chidambaram, the 1<sup>st</sup> defendant has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.103 of 2011 for declaration and permanent injunction. The defendants filed their written statement and are contesting the suit. In the said suit, the defendants filed an application in I.A.No.595 of 2014 under Order 26, Rule 9 of CPC seeking for appointment of an Advocate Commissioner to note down the physical features and fix the boundary. The application was contested by the plaintiff.

3. The Trial Court, after taking into consideration the case of both the parties, dismissed the application finding that the parties cannot collect evidence through Advocate Commissioner.

4. The learned counsel appearing for the petitioner submitted that even in the plaint, in paragraph No.4, the plaintiff has not mentioned that patta number. Pointing out the said mistake, the defendants also filed their written statement stating that the plaintiff has left a blank in the plaint with regard to the patta number. That apart the learned counsel further

submitted that the description of the property mentioned in the suit schedule is also not clear with regard to the location of the property. The learned counsel also submitted that the defendants' properties are located on both sides of the suit property.

5. It is settled position that a party cannot collect evidence through Advocate Commissioner. That apart, the burden of proof lies only on the plaintiff to prove his case by oral and documentary evidences. Therefore, the present application filed by the defendants seeking for appointing of Advocate Commissioner to locate the suit property is unnecessary and therefore, the Trial Court has rightly dismissed the application.

6. In these circumstances, 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

20.07.2015

Rj

To

The District Munsif Court,  
Chidambaram

M. DURAISWAMY,J.,

Rj

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