

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.07.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.2771 of 2015 &
M.P.No.1 of 2015

Deivanai

... Petitioner

v.

Krishnamurthy

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order 15.04.2015 made in I.A.No.348 of 2015 in O.S.No.141 of 2010 on the file of District Munsif Court, Palacode.

For Petitioner : Mr.MA.P.Thangavel

ORDER

Challenging the fair and final order passed in I.A.No.348 of 2015 in O.S.No.141 of 2010 on the file of District Munsif Court, Palacode, the plaintiff has filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.141 of 2010 for declaration and permanent injunction. The defendant filed her written statement and is contesting the suit.

3. Now, after a lapse of 5 years, the plaintiff took out an application in I.A.No. 348 of 2015 under Order 26, Rule 9 of CPC seeking for appointment of an Advocate Commissioner to note down the physical features and especially to note down the house, trees in the suit property and all other topography of the suit property with the help of Village Administrative Officer and Surveyor. The application filed by the plaintiff was opposed by the defendant.

3. The Trial Court, after taking into consideration the case of both the parties, dismissed the application finding that there is no necessity for appointment of Advocate Commissioner and in the case on hand, the possession of the suit property cannot be ascertained by the Advocate Commissioner.

4. On a perusal of the plaint filed by the revision petitioner, it is clear that the petitioner has not mentioned anything about the coconut trees in the plaint. That being the case, when she has not stated anything in the plaint with regard to the coconut trees, there is no necessity for appointing the Advocate Commissioner to note down the trees in the suit property.

5. It is settled position that the plaintiff cannot collect evidence through Advocate Commissioner and she has to prove her case by oral and documentary evidences. That apart, as rightly found by the Trial Court, the Advocate Commissioner cannot give a finding with regard to the possession of the property. In these circumstances, the Trial Court. has rightly dismissed the application.

5. 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

10.07.2015

Rj

To
The District Munsif Court,
Palacode

M. DURAISWAMY,J.,

Rj

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