

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(PD).No.3030 of 2015
and M.P.No.1 of 2015

Kannan

... Petitioner

Vs.

Sankar

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 06.06.2015 passed in I.A.No.62 of 2015 in O.S.No.30 of 2013 on the file of the District Munsif cum Judicial Magistrate, Valangaiman.

For Petitioner : Ms.P.Srividhya

ORDER

Challenging the fair and decreetal order passed in I.A.No.62 of 2015 in O.S.No.30 of 2013 on the file of the District Munsif cum Judicial Magistrate, Valangaiman, the defendant has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.30 of 2013 for permanent injunction. After commencement of the trial, the defendant took out an application in I.A.No.62 of 2015 seeking for appointment of an Advocate Commissioner to note down the physical features. The application was opposed by the plaintiff stating that there is no necessity for appointing an Advocate Commissioner.

3.It is settled position that a party cannot collect evidence through an Advocate Commissioner and it is also settled position that an Advocate Commissioner cannot give a finding with regard to the possession of the property.

4.The present application has been filed by the plaintiff for permanent injunction, therefore, the issue that has to be decided in the present suit is with regard to the possession of the parties. A party to the suit should establish his case by oral and documentary evidences. Taking note of all these aspects, the trial Court has rightly dismissed the application. When the burden of proof lies on the plaintiff to establish his case, he must prove his case by oral and documentary evidences.

5. In these circumstances, the Civil Revision Petition is devoid of merits and the same is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed.

6. The trial Court shall decide the issues involved in the suit, on merits and in accordance with law, within four months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
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27.07.2015

To

The District Munsif cum Judicial Magistrate,
Valangaiman.

M.DURAIWAMY,J.
va

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