

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2015

CORAM:

THE HON'BLE MR. JUSTICE D.HARIPARANTHAMAN

C.R.P.No.3049 of 2015

and

M.P.No.1 of 2015

V.Prema Kumari .. Petitioner/Petitioner/Plaintiff

A.Aari Vs.  
.. Respondent/Respondent/Defendant

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 07.01.2015 made in I.A.No.3393 of 2014 in O.S.No.1196 of 2014 on the file of the VI Assistant City Civil Judge, Chennai.

For Petitioners: Mr.G.Prem Anand Rao

O R D E R

The revision petitioner is the plaintiff in O.S.No.1196 of 2014 on the file of the VI Assistant Judge, City Civil Court, Chennai.

2. The prayer in the suit is for a direction to the defendant to deliver possession of the passage which is measuring about 35 feet in length and 1 ½ feet in breadth, situated on the side of the immovable property more fully described in the schedule and in the sketch annexed to the plaint.

3. The defendant filed the written statement disputing the title to the suit scheduled property

4. It is not the case that the petitioner/plaintiff wants to identify the schedule mentioned property in the suit. According to the defendant, who is the respondent herein, the plaintiff has no title and right over the property. Hence, the petitioner/plaintiff has to first establish his right over the property. However, the petitioner has sought to file an application in I.A.No.3393 of 2014 in O.S.No.1196 of 2014 seeking for appointment of an Advocate

Commissioner. The said application was dismissed by the Trial Court by an order dated 07.01.2015 and aggrieved against the same, the present Civil Revision Petition has been preferred.

5. The Trial Court in its order has held that since the defendant has disputed the very title, the plaintiff has to establish his title and therefore, there is no use in appointment of an Advocate Commissioner. It is useful to extract paragraph 6 of the aforesaid order.

"6. On perusal of records, it is an admitted fact that the petitioner alleged to have purchased the lease hold right of one Amaravathi Ammal in the suit property. Obviously there is a dispute between the petitioner and the respondent in respect of the alleged to right owned by the deceased Amaravathy Ammal and the right of the petitioner over the suit property as a lessee of Mr.Govindasamy. The dispute between the petitioner and the respondent is in respect of 52½ sq.ft. The petitioner, first should prove his title over the suit property. Prima facie the petitioner has not so far established his right over the suit property. The petitioner is not very specific that he has purchased the suit property. When there is a clear cloud over the title of the petitioner in the suit property, appointment of the advocate commissioner cannot be ordered. In the light of the foregoing discussions, I do not find any merit in the petition and the petition deserves to be dismissed."

6. In such circumstances, I am of the view that the Civil Revision Petition fails and the same is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

pgp

To

The VI Assistant Judge, City Civil Court, Chennai.

C.R.P.No.3049 of 2015

TS (CO)  
EU (20/08/2015)