

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.3710 of 2015
and M.P.No.1 of 2015

K.Duraisamy

.. Petitioner

Vs

1.Selvam

2.S.Gomathi

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 17.02.2015 made in I.A.No.13 of 2015 in O.S.No.73 of 2012 on the file of the District Munsif cum Judicial Magistrate No.I, Walajapet, Vellore District.

For Petitioner : Mr.T.P.Prabakaran

ORDER

The Civil Revision Petition is filed against the order dated 17.02.2015 made in I.A.No.13 of 2015 in O.S.No.73 of 2012 on the file of the District Munsif cum Judicial Magistrate No.I, Walajapet, Vellore District.

2.The petitioner as a plaintiff filed a suit in O.S.No.73 of 2012 for bare injunction restraining the defendants from interfering with the plaintiff's

peaceful possession and enjoyment of the suit property stating that he is in possession and enjoyment of the suit property which is a Government poromboke. The defendants attempted to interfere his possession. Hence, he was constrained to file a suit. During the pendency of the suit, the petitioner/plaintiff filed an application for appointment of Advocate Commissioner. The Trial Court after hearing both sides has dismissed the application. Against which, the present Civil Revision Petition has been filed by the petitioner/plaintiff.

3.Learned counsel for the petitioner submitted that he has not filed the application for appointment of Advocate Commissioner to collect material evidence to prove his possession. He further submitted that the Trial Court has erroneously came to the conclusion that the application has been filed to collect material evidence to prove his possession and on that basis, dismissed the said application. Hence, he prayed for setting aside the order passed by the Trial Court.

4.At the time of admission, the argument of the learned counsel for the petitioner is heard in length.

5.The petitioner as a plaintiff filed a suit for permanent injunction

restraining the respondents/defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property stating that the property is a Government poromboke land vested with the Government. The petitioner/plaintiff got the property thirty years back and he put up thatched house and also running Tiffin stall by paying kist to the Government. While so, the respondents attempted to interfere his possession and hence, he was constrained to file a suit. The first defendant filed a written statement and contested the suit stating that the plaintiff was not in possession and enjoyment of the suit property. The suit property belongs to Padavettamman temple and that has been adopted by the second defendant. Thereafter, the petitioner/plaintiff has come forward with an application for appointment of Advocate Commissioner wherein, in paragraph No.4, it is held as follows:

“4.I submit that the above circumstances it is just and necessary to appoint an Advocate Commissioner to inspect the suit property and file a report with regard to the location, S.No., physical features, etc., of the suit property. The appointment of Commissioner will give first hand information to this Hon'ble Court to decide the issue in correct perspective. Hence, I am filing this application.”

6.The above paragraph shows that the petitioner/plaintiff want to collect material evidence to prove his possession. If really, he is in possession

of the suit property for more than thirty years and the property has been assessed to tax, he may very well prove his possession by filing revenue documents. But without doing so, he filed an application for appointment of Advocate Commissioner. It is well settled dictum of the Hon'ble Apex Court that no Commissioner shall be appointed to collect material evidence to prove his possession. Therefore, I am of the view that the Trial Court after applying the ratio decendi of *Thangaraj vs. Pappathi* reported in **2014 (2) CTC 68**, has dismissed the application. So, I do not find any reason to interfere with the finding of the Trial Court. Hence, the impugned order passed by the Trial Court is hereby confirmed and the Civil Revision Petition is hereby dismissed.

7. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

10.12.2015

Index: Yes/No
Internet: Yes/No
cse

To

The District Munsif cum Judicial Magistrate No.I,
Walajapet, Vellore District.

R.MALA. J.,

cse

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