

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.4235 of 2015

Palaniappan

.. Petitioner/Defendant

Vs.

Vellingiri

.. Respondent/Plaintiff

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the order dated 09.07.2015 in I.A.No.2169 of 2015 in O.S.No.1462 of 2015 on the file of the District Munsif Court, Coimbatore.

For Petitioner :Mr.S.V.Pravin Rathinam

ORDER

The Civil Revision Petition is filed against the order dated 09.07.2015 in I.A.No.2169 of 2015 in O.S.No.1462 of 2015 on the file of the District Munsif Court, Coimbatore.

2.The respondent herein as a plaintiff filed a suit in O.S.No.1462 of 2015 for declaration of title and also for consequential injunction in respect of S.No.483 with an extent of 11.06 acres, out of which, the plaintiff is claiming southern side - extent 5.30 1/2 acres of agricultural land together with mamool right of way.

3.The respondent/plaintiff has also filed an application in I.A.No.2169 of 2015 for appointing a Commissioner to measure, to localise and to demarcate the suit property and also to fix sufficient number of boundary stones on the northern side of the suit property with the assistance of a qualified surveyor and to file his report together with plans answering the memo of instructions that may be given to him at the time of his inspection. The trial Court after perusing the documents, allowed the application, against which, the present revision petition has been preferred by the defendant.

4.Learned counsel for the revision petitioner/defendant submits that the grand mother of the revision petitioner/defendant viz., Nanjammal, has purchased the property to the extent of 6.54 acres - S.F.No.483 under the registered sale deed dated

11.09.1980. She executed a Will and the revision petitioner/defendant is a sole legatee and beneficiary under the Will and that he is in possession and enjoyment of the same. So the direction given by the trial Court to the Advocate Commissioner to demarcate the suit property and also to fix sufficient number of boundary stones on the northern side of the suit property, is against law. For the reason, he has relied upon the decision of Andhra High Court in C.R.P.No.3760 of 2014, dated 11.11.2014 in (K.Dayanand and another v. P.Sampath Kumar) and prayed for allowing the revision.

5.Heard the learned counsel for the revision petitioner and perused the typed set of papers.

6.As per the decision of Andhra High Court in **C.R.P.No.3760 of 2014, dated 11.11.2014 in (K.Dayanand and another v. P.Sampath Kumar)**, in para-16, it was held that when once the possession itself is in dispute, it is for the plaintiff to plead and establish that he is in possession of plaint schedule property. In fact, after institution of the said suit, some properties from out of the plaint schedule properties were sold. Under such circumstances, Advocate Commissioner shall not be appointed to fix the boundary

stone and divide the same.

7.It is true, the Advocate Commissioner has no locus-tandi to fix the boundary. In such circumstances, instead of setting aside the application for appointment of Advocate Commissioner, a direction is given to the Advocate Commissioner to inspect the suit property viz., the entire survey No.483, total extent 11.06 acres, with the District Surveyor along with revenue records and measure the property and file a report as per the revenue records, without demarcating and fixing the survey stones.

8.This Civil Revision Petition is ordered accordingly. Both the parties are directed to give memo of instruction to the Advocate Commissioner and the Advocate Commissioner is directed to carry out the same at the time of inspection. No costs.

09.12.2015

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Index:Yes/No

To
The District Munsif Court, Coimbatore.

R.MALA,J.

Kj

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