

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.4413 of 2015

and

M.P. No.1 of 2015

Deivathal

.. Petitioners/Plaintiff

Vs.

A.Balasubramani

.. Respondent/Defendant

Prayer:- This Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 02.09.2015 in I.A.No.731 of 2015 in O.S.No.482 of 2013 on the file of I Additional District Court, Erode.

For Petitioner :Mr.V.Regunathan

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 02.09.2015 in I.A.No.731 of 2015 in O.S.No.482 of 2013 on the file of I Additional District Court, Erode.

2.The revision petitioner herein as a plaintiff filed a suit in O.S.No.482 of 2013 for permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The defendant has filed a written statement and contesting the suit. During pendency of the suit, the plaintiff filed an application in I.A.No.731 of 2015 for appointment of Advocate Commissioner to identify and measure the suit property and file a report. The trial Court, after hearing both sides, dismissed the application, against which, the present revision petition is preferred by the plaintiff/revision petitioner.

3.Learned counsel for the revision petitioner/plaintiff submits that the suit property was purchased by the father of the revision petitioner and 13 others on 02.05.1956 and from the date onwards, they are in possession and enjoyment of the same. Father of the revision petitioner died intestate on 20.07.2002 leaving behind his only daughter, the plaintiff/revision petitioner herein. Since the defendant has attempted to interfere with the plaintiff's peaceful possession and enjoyment of the suit property, she was constrained to file the suit for bare injunction. The defendant has filed the written statement stating that the plaintiff is not in possession and

enjoyment of the suit property. He further submits that during pendency of the suit, the plaintiff/revision petitioner has filed an application in I.A.No.731 of 2015 for appointment of Advocate Commissioner to verify whether the suit property is situated in Re-survey No.239/3 or Re-survey No.239/2. For the said purpose, appointment of Advocate Commissioner is necessary, but that factum has not been considered by the trial Court. Hence, he prayed for allowing the revision petition.

4.At the time of admission, argument of the learned counsel for the revision petitioner is heard in length and perused the typed set of papers.

5.In the description of the suit property, it was mentioned as Re-survey No.239/3, out of one Acre 30 cents, father of the revision petitioner and 13 others purchased one Acre. But whereas the defendant/respondent in his written statement raised a plea that he purchased the property situated in R.S.No.239/3.

6.According to the plaintiff/revision petitioner, to verify as to whether the suit property has been situated in S.No.239/3 or

S.No.239/2, appointment of Advocate Commissioner is necessary to identify and measure the suit property.

7.In a suit for bare injunction, it is the duty of the plaintiff to prove that she is in possession and enjoyment of the suit property and her possession is legal one by way of marking revenue records. It is well settled dictum of the Apex Court that no Advocate Commissioner can be appointed to collect the material evidence to prove the plaintiff's case that too to prove possession. Under such circumstances, once the plaintiff has filed the suit for bare injunction stating that she is in possession and enjoyment of the property situated in S.No.239/3, she has to file the relevant document.

8.Furthermore, learned counsel for the revision petitioner/plaintiff submits that even though the defendant/respondent has filed a counter in I.A.No.731 of 2015 stating that he has no objection for appointment of Advocate Commissioner, the trial Court has dismissed the application. In my view, as if the defendant/respondent has expressed no objection to allow the application for appointment of Advocate Commissioner, it is not the duty cast upon the Court to allow that application. In the

case on hand, it is clear that both the parties with a malafide intention to drag on the proceedings, have come forward with such application. As already stated that in a suit for bare injunction, it is the duty of the plaintiff to prove her legal possession by way of marking revenue document, but she cannot be permitted to collect material evidence through the Advocate Commissioner. Therefore, the order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The revision petition deserves to be dismissed and it is hereby dismissed.

9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

23.11.2015

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To

I Additional District Court, Erode.

R.MALA,J.

Kj

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