

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.4514 of 2015

Vijayalakshmi

.. Petitioner

Vs

1.The Commissioner,
Dharmapuri Municipality, Dharmapuri District.

2.Executive Engineer,
Highway Department,
Dharmapuri District.

3.State rep. by
The District Collector,
Dharmapuri District.

.. Respondents

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 20.08.2015 made in I.A.No.36 of 2015 in O.S.No.5 of 2015 on the file of the District Munsif Court, Dharmapuri District.

For Petitioner : Mr.P.M.Jayachandran

ORDER

The Civil Revision Petition is filed against the dated 20.08.2015 made in I.A.No.36 of 2015 in O.S.No.5 of 2015 on the file of the District Munsif Court,

Dharmapuri District.

2.Learned counsel appearing for the petitioner/plaintiff submitted that the petitioner as a plaintiff filed a suit for bare injunction stating that she is in possession and enjoyment of the suit property. She got the property by way of settlement deed dated 18.11.1994 and she had put up her house and cattle shed and enjoying the property. But the respondent/defendant without having any right over the property attempted to interfere her possession and enjoyment of the property. During the pendency of the suit, she filed an application in I.A.No.36 of 2015 for appointment of Advocate Commissioner. The Trial Court after hearing both sides dismissed the said application. He further submitted that to prove the fact that the suit property is not situated in a Government Poromboke land, appointment of Advocate Commissioner is necessary. That factum was not considered by the Trial Court. Hence, she prayed for setting aside the order passed by the Trial Court.

3.At the time of admission, argument of the learned counsel for the revision petitioner heard in length.

4.On perusal of the affidavit filed by the revision petitioner, it shows that according to the respondent/defendant the revision petitioner/plaintiff

has encroached upon the Poromboke land and put up drainage and enjoying the property. It is pertinent to note that in paragraph No.10 of the affidavit, it is stated that to prove whether she is in possession of the Government Poromboke land, she has filed application for appointment of Advocate Commissioner. It is well settled dictum of the Hon'ble Apex Court that no Commissioner can be appointed to collect material evidence. That factum was rightly considered by the Trial Court. In such circumstances, I do not find any reason to interfere with the findings of the Trial Court. Hence, the Civil Revision Petition is hereby dismissed as devoid of merits and the impugned order passed by the Trial Court is hereby confirmed.

5. In the result, the Civil Revision Petition is dismissed. No costs.

09.12.2015

Index: Yes/No
Internet: Yes/No
cse

To

The District Munsif Court, Dharmapuri.

R.MALA. J.,

cse

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