

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2015

CORAM:

THE HON'BLE **MS. JUSTICE R.MALA**

C.R.P.(PD).No.4591 of 2015

and

M.P.No.1 of 2015

K.Sabarinathan
S/o.Kuppusamy

.. Petitioner/Petitioner/Plaintiff

Vs.

Paramasivam
S/o.Ayyamperumal Padayachi

.. Respondent/Respondent/Defendant

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 01.07.2015 made in I.A.No.1236 of 2014 in O.S.No.317 of 2014 on the file of the District Munsif Court, Attur.

For Petitioners : Mr.S.Gunalan

ORDER

Heard the learned counsel appearing for the revision petitioner.

2. The revision petitioner has come forward with the present challenging the impugned order dated 01.07.2015 made in I.A.No.1236 of 2014 in O.S.No.317 of 2014, wherein the application filed under Order 26 Rule 9 CPC, for appointment of an Advocate Commissioner, came to be dismissed.

3. The petitioner herein as plaintiff has filed the suit in O.S.No.317 of 2014 for permanent injunction restraining the defendant and their men from in any manner encroaching, interfering, disturbing or trespassing or removing the boundary stone over the suit property on the eastern side of S.No.158/4 & 158/5, stating that he had purchased those properties on 06.12.2013 and from that date onwards, the plaintiff is possession and enjoyment of the property. However, the defendant, who is the adjacent land owner on the eastern side of the suit property bearing S.No.159, without any rhyme or reason attempted to interfere with the possession of the plaintiff and hence, the plaintiff was constrained to file the suit for permanent injunction.

4. The respondent/defendant contested the suit by filing written statement wherein it was stated that the defendant is in possession and enjoyment of the suit property and the plaintiff attempted to interfere with his possession, which was prevented. It was further stated therein that the plaintiff has not stated the details from whom he has purchased the property and whether his predecessor in title has right over the property. While so, during the pendency of the suit, the petitioner/plaintiff filed an application in I.A.No.1236 of 2014 under Order 26 Rule 9 CPC, for appointment of an Advocate Commissioner. However, the said application came to be dismissed by the Trial Court and as against the same, the present Civil Revision Petition has been preferred.

5. Challenging the impugned order passed by the Trial Court, learned counsel appearing for the revision petitioner would submit that during the month of June 2014, the respondent/defendant along with his henchmen came to the suit property, removed the boundary stone and encroached upon the property stating that there is a partition suit pending between the defendant and his brothers, regarding their

properties and that only after the completion of their partition suit, the suit property can be measured and the boundary stone between the property of the plaintiff and the defendant can be fixed. Hence, the revision petitioner was constrained to file an application for appointment of an Advocate Commissioner. However, the Trial Court without considering the said factum had dismissed the application and hence, the learned counsel for the revision petitioner prayed for setting aside the impugned order.

6. Considered the submissions made by the learned counsel for the revision petitioner and perused the typed set of papers.

7. In the plaint, it was stated that the plaintiff had purchased the suit scheduled property on 06.12.2013 and thereafter, the plaintiff is in continuous possession and enjoyment of the property. While so, the defendant who is the adjacent land owner on the eastern side bearing S.No.159 encroached upon the property and removed all the boundary stones already available. Hence, the petitioner/plaintiff has given an application before the Tahsildar, Attur to measure the property belonging to the petitioner and the respondent and fix the boundaries. Pursuant to same, when the surveyor attempted to measure the

property on 26.05.2014, after due notice, the defendant prevented the surveyor from measuring and laying the boundary stones. The said act of the defendant necessitated the plaintiff to file the suit.

8. However, it has to be seen that the suit has been filed seeking for bare injunction and not for declaration of title. It is also pertinent to note that the property was purchased by the plaintiff in the month of December 2013 and the suit came to be filed in the month of August 2014, which would show that the plaintiff has purchased the litigation. Further, the suit was filed after an order was passed by the Tahsildar on 17.06.2014. Furthermore, since the suit is for bare injunction, it is the duty of the petitioner/plaintiff to prove his case that he is in possession, that too legal possession by way of filing revenue records and examining the witnesses and that he cannot collect material evidence by way of appointment of an Advocate Commissioner. Above all, the boundary of the properties can be fixed only by the revenue officials and not by an Advocate Commissioner. The Trial Court has rightly considered those aspects and dismissed the application preferred by the revision petitioner.

9. In these circumstances, I do not find any reason to interfere

with the order passed by the Trial Court and consequently, the Civil Revision Petition stands dismissed as devoid of merits. Connected miscellaneous petition is closed. No costs.

15.12.2015

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To

The learned District Munsif Court,
Attur.

R.MALA, J.

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