

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.4722 of 2015
and M.P.No.1 of 2015

Sundari

.. Petitioner/Defendant

Vs.

Dhanalakshmi

.. Respondent/Plaintiff

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 18.06.2015 in I.A.No.508 of 2013 in O.S.No.155 of 2012 on the file of the Additional Sub-Court (FAC), Tiruvannamalai.

For Petitioner : Mr.G.Rajan

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 18.06.2015 in I.A.No.508 of 2013 in O.S.No.155 of 2012 on the file of the Additional Sub-Court (FAC), Tiruvannamalai.

2.The respondent herein as a plaintiff filed a suit in O.S.No.155 of 2012 for declaration of title to the B schedule property and recovery of possession of B schedule property after removing compound wall put up around it and also for costs. The defendant/revision petitioner herein filed a detailed written statement and contesting the same. During pendency of the suit, the respondent/plaintiff has filed an application in I.A.No.508 of 2013 under Order 26 Rule 9 C.P.C. for appointment of Advocate Commissioner to measure the suit A schedule property with the assistance of the Town Surveyor to note down its physical features and to submit a report with plan stating that A schedule property belongs to the plaintiff, B schedule property forms part of A schedule property. As the B schedule property is encroached upon by the defendant/revision petitioner by putting up compound wall, appointment of Advocate Commissioner is necessary to find out the same. The trial Court, after hearing both sides, allowed the application, against which, the present revision has been preferred by the defendant.

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

4.Learned counsel for the revision petitioner submits that since the suit has been filed for recovery of possession, there is no need for appointment of Advocate Commissioner. His second limb of argument is that in the description of B schedule property, it was stated that East to West 17 feet on southern side, North to South 60 feet. The measurement is more than 1000 sq.ft., so it was wrongly measured. That factum was not considered by the trial Court. Therefore, he prayed for allowing the revision.

5.On perusal of typed set of papers, it reveals that the respondent herein as a plaintiff filed a suit for declaration of title to the B schedule property and recovery of possession of B schedule property stating that originally, she is the owner of the entire property. She sold an extent of 4,290 sq.ft. from A schedule property to one Ananthi, W/o. Radha vide registered sale deed dated 14.02.2011 and retained 510 sq.ft. which is set out in the B schedule property and the same has been encroached by the revision petitioner/defendant.

6.Admittedly, the suit is for declaration of title and recovery of possession of B schedule property. According to the defendant, she

is entitled to plot No.32. So it is appropriate on the part of the Court to appoint the Advocate Commissioner to find out whether B schedule property is a part of plot No.32 belonging to the defendant or it is a part of the property of the respondent/plaintiff, who purchased the same under the sale deed dated 26.12.1995 (i.e.) East to West 80 feet and North to South 60 feet. So argument of learned counsel for the revision petitioner that merely because the suit has been filed for recovery of possession, there is no necessity for appointment of Advocate Commissioner does not merit acceptance.

7. In respect of second limb of argument is concerned, in the description of B schedule property, wrong measurement has been given. Under such circumstances, I am of the view, appointment of Advocate Commissioner is necessary to assist the Court to measure both A and B schedule properties and also to measure plot No.32 with the help of town surveyor and file a report along with a plan. It will help the Court to adjudicate the matter and arrive at a correct conclusion. Hence, the order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. I do not find any merits in the revision. Consequently, the Civil Revision

Petition stands dismissed. However, a direction is issued to the Advocate Commissioner to measure not only A schedule property and also to measure both A and B schedule properties and plot No.32 with the help of town surveyor and file a report along with a plan.

8.In fine, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

18.12.2015

Index:Yes/No
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To

The Additional Sub-Court (FAC), Tiruvannamalai.

R.MALA,J.

kj

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