

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.12.2015

CORAM

THE HON'BLE MR. **JUSTICE K.KALYANASUNDARAM**

**CRP (PD) No.4825 of 2015
and M.P.No.1 of 2015**

D.Venkataramanan

... Petitioner

VS.

1.Shanthi

2.Natesan

3.Chidambaram

... Respondents

Civil Revision Petition has been filed under Article 227 of the Constitution of India against the order dated 08.12.2015 passed in I.A.No.1684 of 2015 in O.S.No.356 of 2006 on the file of the District Munsif Court, Ambattur.

For Petitioner : Mr.P.Krishnan

For R1 & R2 : Mr.S.Subbiah

ORDER

This Civil Revision Petition has been filed challenging the order dated 08.12.2015 made in I.A.No.1684 of 2015 in O.S.No.356 of 2006 on the file of the District Munsif Court, Ambattur.

2.The petitioner/plaintiff instituted a suit in O.S.No.356 of 2006 before the District Munsif Court, Ambattur against the respondents/defendants praying for permanent injunction restraining the defendants, their men and agents from interfering and disturbing with the plaintiff's peaceful possession and enjoyment of the property bearing Plot No.3, Samson Saroja Street, Golden George Nagar, Mogappair, Chennai-37 measuring 2280 sq.ft. comprised in Gramanatham Survey No.425-part of Mogappair Village. The respondents by filing a written statement are contesting the suit.

3.It is seen from the records that the trial in the suit commenced on 04.10.2010. While so, the petitioner filed an application in I.A. No.1684 of 2015 in the said suit seeking appointment of an Advocate Commissioner to visit and locate the suit property in Town Survey No.73, Ward H Block 74 and also the respondents' property in Town Survey No.79, Ward H, Block 76 with the assistance of the Town Surveyor and to file report of both the properties along with sketch. The respondents resisted the said application by contending that the properties of the petitioner and the respondents are different and there is no need to appoint an Advocate Commissioner for identification of those properties.

4.The learned District Munsif dismissed the application by observing that the plaintiff has to prove his possession through oral and documentary evidence and he cannot seek appointment of an Advocate Commissioner to prove his possession. Aggrieved by the said order, the present Civil Revision Petition has been filed.

5.Mr.P.Krishnan, learned counsel for the petitioner would submit that the respondents filed their written statement by stating that the properties of the petitioner and the respondents are different and the petitioner is attempting to encroach upon the property of the respondents and hence if an Advocate Commissioner is appointed to visit and identify the properties of the petitioner and the respondents and file a report, it will be easy for the trial court to render a judgment. In support of his contention, learned counsel relies upon the judgments of this court reported in **2002-4-LW.142 (Saraswathy and another v. Viswanathan)** and **2007-1-LW.68 (S.Sundarasamy v. S.Saraswathy)**.

6.Per contra, Mr.S.Subbiah, learned counsel for the respondents would submit that the petitioner has filed the suit for bare injunction and he has to prove that on the date of institution of the plaint, he was

in possession and enjoyment of the suit property. However, the petitioner filed the application in IA.No.1684/2015 after 9 years during the fag end of the trial only to prolong the proceedings and the said application was rightly dismissed by the trial court. Therefore, learned counsel prays for dismissal of this revision petition.

7.Heard both sides and perused the materials available on records.

8.It is not in dispute that the petitioner had instituted the suit in OS.No.356 of 2006 on 11.08.2006 against the respondents seeking permanent injunction. It is also not in dispute that the trial had commenced on 04.10.2010. In such circumstances, the petitioner choose to file the application in IA.No.1684 of 2015 only on 18.11.2015 i.e., after 9 years of the institution of the suit. In the said application, the petitioner sought for appointment of an Advocate Commissioner not only to inspect the suit property of the petitioner and also the property of the respondents. The learned trial judge has rightly dismissed the application by holding that the petitioner has to prove his possession by adducing oral and documentary evidence and the appointment of an Advocate Commissioner is not at all necessary

in the suit. In my considered opinion, the judgments relied on by the learned counsel for the petitioner have no bearing on the facts of the case. Hence, I do not find any illegality or irregularity in the order impugned in this revision petition.

9. In the result, this Civil Revision Petition is dismissed. However, there is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

29-12-2015

rk

Index: Yes/ No

To

The District Munsif Court, Ambattur.

K.KALYANASUNDARAM, J.

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