

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.3130 of 2013

and

M.P.No.1 of 2013

1.Kamala
2.Neelavathi
3.Chandralega

.. Petitioners

Vs

Jayaraman

.. Respondent

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 12.03.2013 passed in I.A.No.150 of 2013 in O.S.No.250 of 2011 on the file of the District Munsif Court, Tirupattur, Vellore District.

For Petitioners : Mr.G.Jeremiah
For Respondent : Mr.S.Sathish Rajan

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 12.03.2013 passed in I.A.No.150 of 2013 in O.S.No.250 of 2011 on the file of the District Munsif Court, Tirupattur, Vellore District.

2.The respondent as a plaintiff filed a suit in O.S.No.250 of 2011 on the file of the District Munsif Court, Tirupattur for declaration of title and also for injunction stating that the property has been originally belong to one Ramasamy. The said Ramasamy had one son and two daughters. The suit property has been orally given partition to Chinnathayammal and she executed a Will. On that basis, she is in possession and enjoyment of the same. But the defendants attempted to interfere with the possession of the plaintiff and also deny his title. During the pendency of the suit, the defendants have filed an application in I.A.No.150 of 2013 for appointment of Advocate Commissioner to identify the suit property by stating that the survey number mentioned in the plaint belongs to different property. The Trial Court after hearing both sides has dismissed the application. Against which, the present Civil Revision Petition has been preferred.

3.The learned counsel for the petitioners submitted that it was admitted by both sides that the properties were allotted to the share of Chinnathayammal and she executed a Sale deed in favour of the third parties and the suit property alone has been in possession of the plaintiff. He further submitted that the description of the property and extent has not been properly mentioned. That factum was not considered by the Trial Court. He would also submit that no prejudice would be caused if the Advocate

Commissioner has been appointed to inspect the property and find out the correct survey number and the extent available. Hence, he prayed for setting aside the order passed by the Trial Court in I.A.No.150 of 2013.

4.Resisting the same, the learned counsel for the respondent would submit that no Commissioner can be appointed to collect the material evidence to prove the case. He further submitted that it is the duty of the plaintiff to prove his case who is claiming title on the basis of the Will executed by Chinnathayammal and further both parties have proved the title and possession by way of filing revenue records. So the appointment of Advocate Commissioner is not necessary. To substantiate his argument, the learned counsel for the respondent relied upon the decision reported in ***CDJ 2014 SC 6246 (Jagadeswari vs. Kandasamy and others)*** prayed for dismissal of the revision petition.

5.Considered the rival submissions made on both sides and perused the typed set of papers.

6.The respondent as a plaintiff filed a suit for declaration of title and injunction. The defendants/petitioners filed a detailed written statement and contested the suit. It is well settled dictum of the Apex Court that it is the

duty of the respondent/plaintiff to prove his case and no Advocate Commissioner can be appointed to collect the material evidence. The dispute raised by the petitioners is that survey number has not been properly mentioned and the extent given by the respondent/plaintiff is entirely different and hence, to find out the same, appointment of Advocate Commissioner is necessary. The suit property originally belong to one Ramasamy. He had one son, by name, Govindan, who is the father of the respondent/plaintiff and two daughters. The first defendant is the daughter-in-law and the defendants 2 and 3 are the grandchildren of the said Chinnathayammal.

7.The point to be decided is whether the said Chinnathayammal died intestate or executed a settlement deed has to be decided? Once the plaintiff filed a suit, It is bounden duty of the plaintiff to prove his title to the property and possession by way of filing relevant documents. Admittedly in the description of the property, survey number, boundaries and extent has been given. In such circumstances, I am of the view that appointment of Advocate Commissioner to identify the property does not arise and only with a view to drag on the proceeding this application has been filed. Further, as per the decision of this Court, no Advocate Commissioner can be appointed to collect material evidence. Therefore, the Trial Court has rightly considered all

the aspects in proper perspective and came to the correct conclusion. So, I do not find any reason to interfere with the findings of the Trial Court. Hence, the Civil Revision Petition deserves to be dismissed.

8. In the result, the Civil Revision Petition is dismissed. Further, since the suit is of the year 2011, the Trial Court is disposed of the same within a period of six months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed. No costs.

23.11.2015

Index: Yes/No
Internet: Yes/No
cse

To

The District Munsif Court, Tirupattur, Vellore District.

R.MALA. J.,

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