

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).No.3368 of 2013

and

M.P.No.1 of 2013

1.Seerangayammal
2.Palani Gounder
3.Yuvaraj

.. Petitioners

Vs

Marimuthu

.. Respondent

Prayer:Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 20.06.2013 made in I.A.No.120 of 2012 in O.S.No.309 of 2011 on the file of the Second Additional District Munsif Court, Bhavani.

For Petitioners : Mr.M.Manokaran
For Respondent : Mrs.S.Esai Rani

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 20.06.2013 made in I.A.No.120 of 2012 in O.S.No.309 of 2011 on the file of the Second Additional District Munsif Court, Bhavani.

2.The respondent as a plaintiff filed a suit in O.S.No.309 of 2011 for bare injunction restraining the defendants, their men to interfere with the plaintiff's peaceful possession and enjoyment of the suit property. The defendants/petitioners herein have filed a written statement and contesting the suit. During pendency of the suit, the plaintiff has filed an application in I.A.No.120 of 2012 for appointment of Advocate Commissioner. The trial Court, after hearing both sides, allowed the application and appointed an Advocate Commissioner to note down the physical features, measurement and boundaries of the suit property with the aid of a competent Government Surveyor. Challenging the same, the present revision petition has been preferred by the defendants.

3.Learned counsel for the revision petitioners submitted the even though they filed a counter, the averments in the counter have not been considered by the Trial Court. He further submitted that it is well settled dictum of the Apex Court that no Commissioner can be appointed to collect material evidence to prove his possession. That factum was not considered by the Trial Court. hence, he prayed for setting aside the order passed n I.A.No.120 of 2012.

4. Resisting the same, the learned counsel for the respondent would submit that the Trial Court in paragraph Nos.6 and 8 of the impugned order had stated that the validity of the sale deeds dated 06.01.2011 and 08.10.1975 can be determined at the time of trial and for identification and measurement of the suit property, the appointment of Advocate Commissioner is necessary and on that basis only Advocate Commissioner was appointed. Hence, he 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 bare injunction stating that he purchased the property in S.No.501/5 on 08.10.1975 for Rs.1,95,000/- and from that date onwards he is in possession and enjoyment of the same by mutation of revenue records. While so, the defendants attempted to interfere with the possession of the plaintiff since they are unable to purchase the property. Hence, he was constrained to file a suit for bare injunction. But the defendants filed the written statement stating that correct survey number and boundaries are not given and the description of the property is also wrong. It is further stated that after 08.10.1975 the plaintiff purchased the property on 06.01.2011. It is well settled dictum of the Apex Court that in a suit for bare

injunction the respondent/plaintiff has to prove that he is in legal possession and then only, he is entitled to injunction. But here Advocate Commissioner has been appointed to verify whether the plaintiff is in possession and whether the property is within the boundaries mentioned in the sale deeds dated 08.10.1975 and 06.01.2011. In such circumstances, I am of the view that no Advocate Commissioner can be appointed to collect material evidence to prove his case and that factum was not considered by the Trial Court. Hence, I am of the view that the impugned order passed by the Trial Court in I.A.No.120 of 2012 is unsustainable and the same is liable to be set aside. Accordingly, the order passed by the Trial Court n I.A.No.120 of 2012 is hereby set aside.

7.In the result, the Civil Revision Petition is allowed. No costs.
Consequently, connected Miscellaneous Petition is closed. No costs.

24.11.2015

Index: Yes/No
Internet: Yes/No
cse

To

TheII Additional District Munsif Court, Bhavani.

R.MALA. J.,

cse

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