



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.03.2015

CORAM:

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.R.P. (MD).Nos.473 and 474 of 2015

and

M.P. (MD).No.1 of 2015

in

C.R.P. (MD).No.473 of 2015

J.Thangaraj

... Revision Petitioner in both C.R.Ps/
Petitioner/Plaintiff

vs.

1.V.Mathiyalagan

2.M.Thennarasu

... Respondents in both C.R.Ps/
Respondents/Defendants 1 & 2

COMMON PRAYER: This Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed by the Additional District Munsif Court, Srivilliputtur in I.A.No.1711 of 2013 in O.S.No.174 of 2011 on 28.02.2014 and I.A.No.1546 of 2014 in O.S.No.174 of 2011 on 29.10.2014 and allow this civil revision petition.

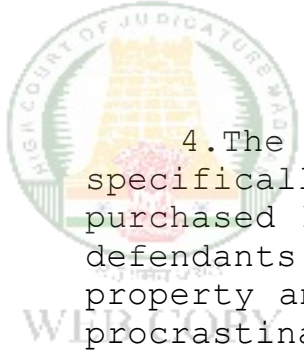
For Petitioners : Mr.G.Marimuthu

COMMON ORDER

The plaintiff has filed the above revisions challenging the order dismissing the I.A.No.1711 of 2013 and I.A.No.1546 of 2014 in O.S.No.174 of 2011 for appointment of Commissioner.

2.The suit is filed for partition. In I.A.No.1711 of 2013, appointment of an Advocate Commissioner is sought for to measure the property with the help of the surveyor to note down the physical features and submit his report.

3.According to the plaintiff/petitioner when D.W.1 was cross-examined in part and the documents were perused, for continuation of cross-examination of D.W.1, the plaintiff found that the defendants had shown the plaintiff's property as western boundary to their properties and the measurements were also specified. According to the plaintiff, the defendants are entitled to get only 3 cents of land. However, the defendants are in possession of more than the extent what they are entitled to. Since both the plaintiff and the defendants claimed their share over the undivided extent of land, the plaintiff sought for appointment of Commissioner.



4.The said application was resisted by the defendants. It is specifically contended by the defendants that the suit property purchased by the plaintiff is subsequent to the sale deed of the defendants. Therefore, the plaintiff has got no right over the property and the plaintiff has also filed this application only to procrastinate the proceedings.

5.The learned District Munsif Court heard the parties in the application, held that there is no necessity for appointment of Advocate Commissioner.

6.The only point that has to be decided is whether the Commissioner has to be appointed in the given facts.

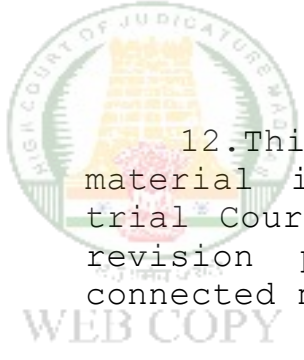
7.The suit has been filed by the plaintiff for partition and for declaration that the sale deed dated 09.12.2009 executed by the second defendant in favour of the first defendant is null and void and also for permanent injunction.

8.According to the defendants, the vendor of the plaintiff had only 1/8th share in the suit property and the other sale deeds based on which, the plaintiff claimed right are all not valid. The plaintiff contended that the defendants have got no right or title over the property whereas the defendants asserted that the plaintiff had only 1/8th share in the suit property and that the plaintiff had purchased the property from the persons, who had got no marketable right or title.

9.In such circumstances, it is for the parties to prove their respective title through document and other evidence and cannot seek appointment of Commissioner. Admittedly, if the defendants are in possession for more than the extent what they are entitled to, such fact cannot be established by appointing an Advocate Commissioner.

10.The learned trial Judge has also specifically held that there is no dispute regarding the physical features or the extent of the property or even the identity of the property. Whiles, the rights of the party can be established only through documentary and other evidence. Therefore, the trial Court held that there was no necessity for appointment of an Advocate Commissioner.

11.It is the discretion of the Court to appoint an Advocate Commissioner. However, it need not be done so, in each case. Even otherwise, the report of the Commissioner is not binding on the Court and it is only a piece of evidence. Hence, the trial Court dismissed the I.A.No.1171 of 2013 on 28.02.2014. Thereafter, for the same relief, the plaintiff had filed another application in I.A.No.1546 of 2014. The said application was also dismissed by the District Munsif Court on the very same grounds.



12. This Court also finds no error of the jurisdiction or any material irregularity or infirmity in the order passed by the trial Court, which warrants interference of the same. The civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(T & P)

/True Copy/

Sub-Assistant Registrar

To

The Additional District Munsif Court, Srivilliputur.

+2ccs to Mr.G.Marimuthu, Advocate, in SR. No.11982 & 11984.

C.R.P.(MD).Nos.473 and 474 of 2015
and M.P.(MD).No.1 of 2015
in C.R.P.(MD).No.473 of 2015
12.03.2015

Ns

msm 31.03.2015 p3/4c