

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-12-2016

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD).No.151 of 2014
and M.P.No.1 of 2014

Vijayalakshmi

.. Petitioner

Vs.

Sadasivam

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order, dated 07.11.2013 passed in I.A.No.172 of 2013 in O.S.No.46 of 2010 on the file of the Additional Sub-Court, Chengalpattu.

For petitioner : No appearance

For respondent : Mr.G.Vijayakumar

ORDER

This Civil Revision Petition is filed by the defendant challenging the order refusing to appoint an Advocate Commissioner in a suit for specific performance.

2. In the cross-examination of P.W.1, a different suit survey number was stated by the respondent/plaintiff. According to the revision petitioner/defendant, the survey number of the suit property mentioned in the sale agreement is different and hence, she sought for appointment of an Advocate Commissioner to ascertain the correct survey number of the suit property. The said I.A. was

dismissed by the learned Additional Sub-Judge, Chengalpattu, stating that it is for the plaintiff to prove the suit property and the defendant has got no role in the same.

3. The revision petitioner's counsel has not been present for the last two occasions and even today. Hence, this revision petition is being disposed of in his absence.

4. The only contention of the revision petitioner/defendant is that P.W.1, in his deposition has stated a different survey number allotted to the suit property, whereas, in the sale agreement, the survey number mentioned is a different one. In a suit for specific performance, which is based on agreement of sale, since there is no dispute with respect to the identity of the property and as the parties were sure about as to what has been sold and purchased, it is for the plaintiff to establish his case, when he has filed the suit for specific performance, which is an equitable remedy. If the survey number in the sale agreement is different from what has been deposed by the plaintiff as P.W.1, it is for the plaintiff/P.W.1 to establish the same through other evidence. The Commissioner cannot be appointed for the said reason.

5. Hence, the trial Court has rightly dismissed the I.A. There is no infirmity to interfere in the impugned order passed by the trial Court. The Civil Revision Petition is accordingly dismissed. No costs. Consequently, the Miscellaneous Petition is closed.

6. Considering the fact that the suit is of the year 2010, the trial Court is directed to dispose of the suit before 30.04.2017.

16-12-2016

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Copy to

1. The Additional Subordinate Judge, Chengalpattu.
2. The Record Keeper, V.R. Section, High Court, Madras.

PUSHPA SATHYANARAYANA, J

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