

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.10.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2477 of 2015

G.Rajavelu

...Petitioner

versus

Ganesan

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 12.03.2015 passed by the Principal District Munsif, Chidambaram in I.A.No.324 of 2014 in O.S.No.103 of 2014.

For Petitioner : Mr.P.R.Thiruneelakandan

For Respondent : No appearance

ORDER

The petitioner filed a suit in O.S.No.103 of 2014 against the respondent. The respondent filed written statement disputing the claim made by the petitioner. Thereafter, the petitioner filed an application in I.A.No.324 of 2014 for appointment of Advocate Commissioner. The application was dismissed by the Trial Court on the ground that the attempt of the petitioner was only to collect evidence through Advocate Commissioner. Feeling aggrieved, the petitioner is before this Court.

2. Heard the learned counsel for the petitioner. None appears on behalf of the respondent.

3. The petitioner filed an application in I.A.No.324 of 2014 with a grievance that there is an attempt on the part of the respondent to change the physical features. The petitioner, therefore, wanted an Advocate Commissioner to be appointed to inspect the suit property and report about its physical features.

4. The order passed by the learned Trial Judge indicates that the petitioner wanted Commission to be issued to measure the property for the purpose of identifying the extent in his possession.

5. The learned Trial Judge dismissed the petition primarily on the ground that the suit is ripe for trial. The question of appointment of Advocate Commissioner would arise only in case certain aspects requires to be clarified. Such clarification issue would arise only after trial. In case, the Court is of the view after perusing the evidence adduced on behalf of the parties that certain points required to be clarified, it is always open to the Court to appoint Advocate

Commissioner. In the subject case, the trial is yet to commence. The petitioner has to lead evidence to substantiate his contention regarding possession of the property and his right to obtain an order of injunction. In case, the Court finds it absolutely necessary to appoint Advocate Commissioner, such appointment can be made. I am therefore of the view that the present petition requires to be restored, so as to enable the learned trial Judge to consider it after conclusion of trial.

6. In the result, the order dated 12.03.2015 is set aside. The application in I.A.No.324 of 2014 is restored to file. The learned Trial Judge is directed to consider the application afresh after conclusion of the evidence. However, I make it clear that it is for the learned Judge to decide as to whether such appointment is necessary taking into account the evidence adduced by the parties.

7. The Civil Revision Petition is disposed of with the above direction. No costs.

21.10.2016

Index:Yes/No
svki

K.K.SASIDHARAN, J.

(svki)

To

The Principal District Munsif Court, Chidambaram.

C.R.P.(P.D.) No.2477 of 2015

21.10.2016