

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2016

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD).No.33 of 2015
and
M.P.No.1 of 2015

K.Mani

... Petitioner/Plaintiff

.. Vs ..

P.Kumaravel

... Respondent/Defendant

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 04.12.2014 passed in I.A.No.1421 of 2014 in O.S.No.323 of 2011, on the file of the District Munsif Court, Sankari.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondent : Mr.P.Jagadeesan

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ORDER

The Civil Revision Petition is filed by the plaintiff against the

order dated 04.12.2014 passed by the learned District Munsif, Sankari, in I.A.No.1421 of 2014 in O.S.No.323 of 2011, refusing to appoint an Advocate Commissioner to measure the property as per Ex.B.3, dated 06.02.2008.

2. The suit is originally filed for mandatory injunction directing the defendant to remove the structures put up in an extent of 55 sq. ft. and hand over possession to the plaintiff. A Commissioner was also appointed at the instance of the plaintiff in I.A.No.982 of 2012. The suit property as prescribed in the plaint is Survey No.52 in Edapadi Municipality. The Advocate Commissioner, who went to measure the property, has filed his report stating that the said Survey No.52, Edapadi Municipality is not available and the property that was identified by the plaintiff, at the time of inspection, in Survey No.80/2 is Village Natham and it is pathway belonging to the Municipality. Therefore, the earlier Commissioner had returned his warrant. The plaintiff/revision petitioner, without amending the plaint with respect to the suit property, filed another application to measure the property belonging to the respondent/defendant as per

Ex.B3, dated 06.02.2008. Though the earlier Commissioner had returned his warrant, the revision petitioner/plaintiff has not taken any steps to amend the suit property or any appropriate steps in that regard. Now, after the trial is commenced, the defendant has deposed in evidence and based on the same, the second application is filed for appointment of a Commissioner to measure the property of the defendant. The learned trial Judge rightly dismissed the same as not maintainable. There is no infirmity in the said order and it is only the exercise of procrastination by the plaintiff.

3. Hence, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. However, there shall be no order as to costs.

20.12.2016

Index : Yes/No
Internet : Yes/No
Jrl

To

The District Munsif Court,

Sankari.

PUSHPA SATHYANARAYANA, J.

Jrl

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