

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

C.R.P.(PD).No.4220 of 2015

and

M.P.No.1 of 2015

N.Ganesh

... Petitioner

Vs.

1.Ramakrishnan

2.Soundarrajan

... Respondents

Prayer:- Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 22.09.2014 made in I.A.No.244 of 2013 in O.S.No.77 of 2008 on the file of District Munsif cum Judicial Magistrate No.1, Walajapet, Vellore District.

For Petitioner : Mr.B.Gurumurthy

ORDER

Heard the learned counsel appearing for the petitioner.
Challenging the impugned order passed in I.A.No.244 of 2013 in

O.S.No.77 of 2008 for dismissal of the application filed under Order 26 Rule 9 of the Civil Procedure Code, seeking appointment of Advocate Commissioner, the present Civil Revision Petition has been filed.

2. At the time of admission, arguments of learned counsel for the petitioner was heard in length. Considering the nature of order to be passed, notice to respondent is dispensed with.

3. The petitioner as Plaintiff filed the suit in O.S.No.77 of 2008. The averments in the plaint are that one Narayanaswamy, who was the only absolute owner of the suit property had executed a registered settlement Deed on 04.02.2008 in favour of the plaintiff out of love and affection and the plaintiff had taken over the suit property and enjoyed the same and while he started constructing a house on the suit vacant site, the defendants attempted to illegally trespass into the suit property and to restrain them, the plaintiff filed suit in O.S.No.77 of 2008 seeking permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property.

4. The second defendant filed written statement in O.S.No.77 of 2008 and stated that it is the habit of Plaintiff's father to file suit against various persons. It is further stated by the second defendant that he already constructed a terraced house with the knowledge of plaintiff and as such the prayer sought in the suit will not at all arise.

5. During the pendency of the suit, the petitioner/plaintiff filed I.A.No.244 of 2013 praying for appointment of Advocate Commissioner to note the existence of the correctness of the property as described in the plaint stating that it will minimise the oral evidence to be let in during trial and will help to ascertain the truth.

6. The trial court, after hearing both sides, dismissed the application in I.A.No.244 of 2013, by relying on the decision of this Court in ***T.K.Krishnamurthy Vs. T.W.A.D., represented by Senior Engineer, RWS Division, Ootacamund and another,*** against which, the present Revision Petition is filed.

7. Learned counsel appearing for the petitioner/plaintiff would submit that even though the 2nd defendant have raised a plea in the written statement that plaintiff's father is in the habit of filing suits against several persons and those suits ended in dismissal, those documents were not filed along with written statement. Hence to ascertain the suit property, the appointment of an Advocate Commissioner is necessary and thus, the learned counsel prayed for setting aside the order dated 22.09.2014.

8. It is a well settled dictum of the Apex Court that no Commissioner could be appointed to gather evidence to prove the case of the parties and the parties should prove their case by themselves by letting in legally acceptable evidence either in the form of documentary evidence or in the form of oral evidence. The prayer sought for in I.A.No.244 of 2013 shows that the petitioner/plaintiff wants to collect materials to prove his possession. In such circumstances, applying the dictum of Apex Court, the petitioner is not entitled for appointment of Advocate Commissioner for the purpose of collecting material evidence to prove his possession and thus, the trial court, has rightly dismissed the

application in I.A.No.244 of 2013.

9. In view of the foregoing discussions, this court confirms the order passed in I.A.No.244 of 2013 dated 22.09.2014 and accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected MP is closed.

04.01.2016

nvsri

To
The District Munsif cum
Judicial Magistrate No.1, Walajapet, Vellore District.

R.MALA,J.

nvsri

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