

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2016

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

C.R.P.(PD)No. 4355 of 2015

And

M.P.No. 1 of 2015

T.Vasanthi ... Petitioner/Petitioner/Respondent/Defendant

Versus

Ayyasamy ... Respondent/Respondent/Petitioner/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 01.09.2015 made in I.A.No. 404 of 2015 in I.A.No. 523 of 2013 in O.S.No. 540 of 2012 on the file of the First Additional District Munsif Court, Erode.

For Petitioner : Mr. M.Guruprasad

For Respondent : Mr.M.V.Venkateseshan

O R D E R

The respondent filed a suit for injunction against the petitioner. In the said suit, a Commissioner was appointed. The commissioner filed his report along with a plan.

2. The petitioner thereafter filed an application to scrap the report and issue a fresh commission. The application was dismissed by the learned trial Judge. Feeling aggrieved, the petitioner is before this Court.

3. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondent.

4. The suit in question is for injunction. It is for the respondent to plead and prove that he is entitled to an injunction as prayed for in the plaint. It is not as if the respondent has to prove the negative. The Commissioner has already inspected the property and submitted a report. The Commissioner is yet to be examined by the Court. There is no question of issuing commission one after another in a suit for injunction. The work of the Commissioner is not to collect evidence, it is only to clarify the factual position in the matter. The learned trial Judge has given sufficient reasons for dismissing the application. I do not find any error or illegality in the order passed by the learned trial Judge.

5. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

28.09.2016

vsg

To

First Additional District Munsif Court, Erode.

K.K.SASIDHARAN, J.

vsg

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