

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.01.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.4832 of 2015

and

M.P. No.1 of 2015

Veerasamy

.. Petitioner/Plaintiff

Vs.

Saminathan

.. Respondent/Defendant

Prayer:- This Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 21.07.2015 in I.A.No.496 of 2014 in O.S.No.97 of 2013 on the file of the I Additional District Munsif Court, Virudhachalam.

For Petitioner : Mrs.A.L.Gandhimathi

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 21.07.2015 in I.A.No.496 of 2014 in O.S.No.97 of 2013 on the file of the I Additional District Munsif Court, Virudhachalam.

2.The revision petitioner herein as a plaintiff filed a suit in

O.S.No.97 of 2013 for declaration of title and injunction. The respondent filed a written statement stating that the plaintiff has encroached upon the property, which belongs to him. Advocate Commissioner was appointed in I.A.No.158 of 2013 and filed his report. The respondent/defendant has also filed objections to the Commissioner's report. The revision petitioner/plaintiff without filing any objection, has filed an application in I.A.No.496 of 2014 for re-issue warrant to the same Commissioner to rectify the defect mentioned by the revision petitioner, with the help of the Surveyor and file a report. The trial Court, after hearing both sides, dismissed the application, against which, the present revision has been preferred by the plaintiff.

3.Learned counsel for the revision petitioner/plaintiff submits that to avoid unnecessary oral evidence, re-issuance of warrant to the Advocate Commissioner is necessary with a direction to him to inspect and measure the suit property with the help of surveyor and point out the physical features of the suit property. That factum was not considered by the trial Court. Therefore, he prayed for allowing the revision.

4.On perusal of the typed set of papers, it reveals that the

father of the plaintiff has been in possession and enjoyment of the suit property from 1960 onwards. He died intestate leaving behind the plaintiff and another son viz., Ravi and daughter Anjalai. The said Ravi also died intestate without any legal heirs. The said Anjalai relinquished her right after marriage. So the plaintiff/revision petitioner has been in possession and enjoyment of the suit property by way of paying kisth to the Government. But the defendant without any reasons, denying plaintiff's title, attempted to interfere his peaceful possession and enjoyment. Therefore, the plaintiff/revision petitioner forced to file the suit for the above said reliefs.

5.The respondent/defendant filed a written statement stating that he is claiming right over the suit property from his father. It is to be noted that Advocate Commissioner was appointed in I.A.No.158 of 2013 and filed his report. The respondent/defendant filed objection, but the plaintiff has not filed any objection. In my view, without filing any objection to the Commissioner's report, the plaintiff is not entitled to be sought for re-issuance of warrant to the Advocate Commissioner. The trial Court in para-5 of its order rightly

considered the above aspect.

6.At this juncture, learned counsel for the revision petitioner wants to file objection to the Commissioner's report before the trial Court.

7.Considering the aforestated circumstances of the case and also taking note of the submissions made by the learned counsel for the revision petitioner, I do not find any reason to interfere with the order passed by the trial Court. Therefore, the order passed by the trial Court is hereby confirmed. Consequently, this civil revision is dismissed. However, a liberty is given to the revision petitioner to file objection to the Commissioner's report along with a petition to condone the delay and on receipt of the same, the trial Court is directed to consider the same in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

21.01.2016

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Index:Yes/No

To

I Additional District Munsif Court, Virudhachalam.

R.MALA,J.

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