

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.1821 of 2016 &

C.M.P.No.9516 of 2016

1.B.Sesha Sainathan

2.Varalakshmi Sesha Sainathan

... Petitioners

v.

P.S.Jesserson Antony

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the judgment and decreetal order dated 2.3.2016 in I.A.No.1015 of 2015 in O.S.No.295 of 2015 on the file of learned District Munsif Court, Ambattur.

For Petitioner : Mr.G.Magesh Kumar

ORDER

Challenging the fair and final order passed in I.A.No.1015 of 2015 in O.S.No.295 of 2015 on the file of District Munsif Court, Ambattur, the defendants have filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No. 295 of 2015 for permanent injunction and mandatory injunction.

3. In the said suit, the plaintiff took out an application in I.A.No.1015 of 2015 seeking for appointment of an Advocate Commissioner to note down the physical features.

4. The application filed by the plaintiff was contested by the defendants stating that there is no necessity for appointment of an Advocate Commissioner to note down the physical features.

5. The Trial Court, after taking into consideration the case of both the parties, allowed the application and appointed an Advocate Commissioner.

6. Aggrieved over the same, the defendants have filed the above Civil Revision Petition.

7. Mr.G.Magesh Kumar, learned counsel appearing for the petitioner submitted that in paragraph No.9 of the affidavit filed in support of the application, the plaintiff has stated that an Advocate Commissioner may be appointed to note down the physical features of the suit property with the assistance of a Taluk Surveyor and submit a report to find out the true ownership of the property. Therefore, the learned counsel submitted that since the plaintiff has stated that to find out the ownership of the property, he is seeking for appointment of an Advocate Commissioner, the order passed by the Trial Court is liable to be set aside.

8. However, on a reading of paragraph No.8 of the affidavit filed in support of the application, it could be seen that there is an averment by the plaintiff that the defendants are putting up construction in the suit property and if the construction is completed by the defendants, they will be put to severe loss and hardship. Further, in paragraph No.9, the plaintiff has stated that in order to establish his case, the appointment of Advocate Commissioner is necessary.

9. Since the plaintiff has filed the suit for mandatory injunction also, I am of the considered view that the Trial Court has rightly allowed the application and appointed an Advocate Commissioner, taking into consideration the averments stated in paragraph Nos. 8 and 9 of the affidavit filed in support of the application.

10. In these circumstances, I do not find any error or irregularity in the order passed by the Trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.06.2016

Index : Yes/No

Rj

To

The District Munsif Court,
Ambattur.

M. DURAISWAMY,J.,

Rj

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