

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-12-2016

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD).No.1947 of 2016
and
C.M.P.No.10184 of 2016

K.P.Krishnamurthy

.. Petitioner

Vs.

1. M.Ramasamy

2. Rajendran

3. State of Tamil Nadu,
Represented by the District Collector,
Erode District.

4. The Tahsildar,
Bhavani Taluk, Erode District.

..

Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order, dated 31.03.2016 passed in I.A.No.594 of 2013 in O.S.No.260 of 2013 on the file of the Subordinate Court, Bhavani.

For petitioner : Mr.P.Dinesh Kumar

For respondents : Mr.S.Kaithamalai Kumaran for RR-1 and 2

RR-3 and 4 - Notice served - No appearance

ORDER

The above Civil Revision Petition is directed against the order refusing to appoint an Advocate Commissioner to fix the Western boundary of the suit property with the assistance of Firka Surveyor and to note down the physical features of the suit property.

2. The application to appoint the Advocate Commissioner was filed by the revision petitioner/plaintiff, as the defendants 3 and 4 objected to measure the suit property by the Revenue Officials engaged by the petitioner. The said application was dismissed by the learned Sub-Judge, stating that, without ascertaining as to what is the entitlement of the petitioner/plaintiff, the Western boundary cannot be fixed.

3. A reading of the plaint schedule property shows that the suit property has been described with specific boundaries. When the revision petitioner/plaintiff himself is clear about his Western boundary, there is no necessity for fixing the Western boundary of the suit property. However, when the measurements are in dispute, the revision petitioner/plaintiff wants the Commissioner to note down the physical features with the measurements taken with the help of Firka Surveyor. The suit being filed one for declaration and permanent injunction, the report of the Commissioner would enable the Court to adjudicate upon the dispute between the parties, though not the report of the

Commissioner is the be-all and end-all of the matter, it may be a piece of evidence along with the other evidence that may be adduced by the plaintiff.

4. Therefore, the impugned order of the learned Sub-Judge is modified by appointing the Advocate Commissioner to visit the suit property and note down the physical features with the help of a Firka Surveyor. The learned Sub-Judge is directed to appoint an Advocate Commissioner in this regard, fixing his fees, time frame for filing report, etc. Accordingly, I.A.No.594 of 2013 in O.S.No.260 of 2013 is remitted back to the Sub-Court, Bhavani. The learned Sub-Judge is directed to dispose of the above said I.A. on the above lines, within a period of four weeks from the date of receipt of a copy of this order.

5. With the above observations and directions, the Civil Revision Petition is disposed of. No costs. Consequently, C.M.P. is closed.

16-12-2016

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Copy to

1. The Subordinate Judge, Bhavani.
2. The District Collector, Erode District.
4. The Tahsildar, Bhavani Taluk, Erode District.

PUSHPA SATHYANARAYANA, J

CS

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