

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.367 of 2016

&

C.M.P.No.1896 of 2016

U.Ethirajan

... Petitioner

VS.

M.Balachandar

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decretal order allowing the I.A.No.128 of 2015 in O.S.No.53 of 2015 dated 22.07.2015 on the file of the Subordinate Judge, Tiruvallur.

For Petitioner : Mr.R.Karunakaran

ORDER

Heard the submissions of the learned counsel for the petitioner.

2. The petitioner is the defendant in the original suit O.S.No.53 of 2015 pending on the file of Subordinate Judge, Tiruvallur. The plaintiff in the said

suit filed an application I.A.No.128 of 2015 for appointment of an Advocate Commissioner to visit the suit properties, measure the suit properties with the help of Taluk Surveyor and submit a report and plan. The learned trial Judge, after hearing both sides, allowed the petition by the order dated 22.07.2015, which is impugned in this present revision preferred under Article 227 of the Constitution of India.

3. The only objection raised by the petitioner herein is that by seeking appointment of an Advocate Commissioner to make a local inspection of the suit properties along with the Taluk Surveyor and submit a report and plan, the respondent herein/plaintiff has made an attempt to collect evidence to prove his case.

4. In majority of the cases, the appointment of a Commissioner to make local inspection and measure the property will dispense with the need of adducing voluminous oral evidence. The Court does have the power to appoint such a Commissioner. The order of the trial Court allowing the application and appointing an Advocate Commissioner for the above said purpose cannot be said to be in exercise of a jurisdiction which is not conferred on it or an order refusing to exercise the jurisdiction conferred on it. It cannot also be said to be an order exceeding the jurisdiction conferred on the trial Court. The amendment of Section 115 of the Code of Civil Procedure is to prevent the litigants from challenging every interim order by

invoking the revisional jurisdiction of the High Court. When that is the intention of the legislature, the power of superintendence under Article 227 of the Constitution of India should be exercised with more resistant to correct manifest errors, to keep the subordinate Court within its jurisdiction or to prevent a miscarriage of justice by abuse of process of Court. No such ground is available in this revision. Hence, this petition deserves dismissal at the threshold.

Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

12.02.2016

Index: Yes/No
Internet: yes/No
gpa

To

The Subordinate Judge
Tiruvallur

P.R.SHIVAKUMAR.J.,

gpa

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