

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.2893 of 2013

and

M.P.No.1 of 2013

P.Balasubramaniam

... Petitioner

vs.

Saraswathy

...Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order of the learned District Munsif, Palladam dated 21.06.2013 made in I.A.No.194 of 2013 in O.S.No.262 of 2012.

For Petitioner : Mr.J.Antony Jesus

For Respondent : Mr.N.S.Sivakumar

ORDER

Heard both sides.

2. The plaintiff in the original suit is the petitioner in the revision. The suit has been filed for the relief of permanent injunction and mandatory injunction on the premise that the suit property belongs

to the plaintiff and a portion of the same had been encroached upon by the defendant. The plaintiff earlier filed an application for appointment of a Commissioner to make local inspection of the suit property, measure the same and submit a report with a plan. In the said application in I.A.No.1139/2008 in O.S.No.262/2012, an Advocate-Commissioner was appointed and the Advocate-Commissioner, after inspection of the properties along with the surveyor in the presence of the parties to the suit, submitted a report and plan. The plaintiff did not file any objection to the report of the Commissioner and he did not seek re-issuance of the warrant to the Commissioner, till the plaintiff, who figured as PW1, was cross-examined by the counsel for the defendant by a suggestion that the Commissioner measured the property of the defendant alone and did not measure the property of the plaintiff.

3. Only thereafter, another application in I.A.No.194/2013 came to be filed by the plaintiff for re-issuance of the warrant to the Commissioner to re-visit the suit property, measure the plaintiff's property and also submit a report and plan. The said application was dismissed by the trial court by the impugned order dated 21.06.2013. The said order of the trial court is challenged in the present revision filed under Article 227 of the Constitution of India.

4. Upon hearing both sides and after perusing the records, this

court does not find any substance in the challenge made in the present revision. The petitioner herein, who is the plaintiff in the suit, paved the way for the appointment of an Advocate-Commissioner to make local inspection of the suit property and submit a report and plan after measuring the same with the help of the surveyor. However the Advocate-Commissioner chose to measure the property of the defendant alone with the help of the surveyor and he did not measure the property of the plaintiff. Though the inspection was made and the measurements were taken in the presence of the parties to the suit and their counsel, the attempt made by the plaintiff, who is the petitioner in the revision, seems to be one to take advantage of the fact that the defendant was in possession of more extent than what was revealed by the sale deed under which he purchased his property. Instead of trying to prove his case that he is entitled to a larger extent of property and out of that extent, a portion had been encroached upon by the defendant, the petitioner herein/plaintiff seems to have taken a chance to substantiate his case by pointing out the absence of title in respect of a portion, which is in defendant's possession and also pointing out that the extent available with the defendant is in excess of the extent shown in the document under which the defendant derived his title. Having chosen to make such an approach, now the plaintiff is caught unaware because of the answer elicited from him that his property was not at all measured by the Commissioner to show what is the extent available with him. The

said answer will have the effect of nullifying the evidentiary value of the commissioner's report. Only after such a development, the plaintiff has chosen to file the petition for re-issuance of warrant to the Commissioner.

5. The learned trial Judge, on proper understanding of the intention of the plaintiff and proper appreciation of facts and applying correct principles of law dismissed the said petition filed by the plaintiff. Hence the challenge made to the impugned order of the trial court in this revision preferred under Article 227 of the Constitution of India, does not have any merit in it and the same deserves dismissal.

In the result, the civil revision petition is dismissed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

19.02.2016

Index : Yes
Internet : Yes
asr

To

The District Munsif, Palladam

P.R.SHIVAKUMAR, J.

asr/-

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