

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.512 of 2016

and

C.M.P.No.2614 of 2016

Sampath

... Petitioner

vs.

Balasubramaniam (deceased)

1.Alagammal

2.Shanthi @ Savithri

3.Jothi Ramalingam

4.Natarajan

5.Kavitha

Ramasamy (died)

Pichayee (died)

6.Periyammal

7.Rani

8.Chitra

9.Kala

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order of the District Munsif, Attur dated 27.11.2015 made in I.A.No.1014 of 2015 in O.S.No.14 of 1999.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.T.Murugamanickam for R1 to R5

ORDER

Heard both sides.

2. The first defendant in O.S.No.114 of 1999 on the file of the Court of District Munsif, Attur is the petitioner in the civil revision petition. The suit was filed originally by deceased Balasubramanian for declaration of title, recovery of possession of the alleged encroached portion shown as 'B' schedule property in the plaint and for cost. Since the said Balasubramanian died, the respondents 1 to 5 were impleaded as plaintiffs 2 to 6. The other respondents are defendants.

3. Before the trial started, the plaintiffs filed I.A.No.1014/2015 for appointment of an Advocate Commissioner to measure the suit properties with the help of a qualified surveyor and submit a report and plan so as to enable the court to arrive at a conclusion as to whether any portion of the property belonging to the plaintiffs has been encroached upon by the defendants. The application was resisted by the first defendant alone, who is the petitioner in the present revision, on the contention that there was no necessity to appoint a Commissioner to measure the land with the help of a surveyor in this suit, as an Advocate-Commissioner appointed in an earlier suit had already submitted a report and plan.

4. The learned trial Judge, rejecting the said objection, allowed the application and appointed an Advocate-Commissioner to measure the suit properties with the help of a qualified surveyor based on the documents and the revenue records and to submit a report and plan after taking such

measurements. It is as against the said order, the present civil revision petition has been filed.

5. The only objection raised by the revision petitioner/first defendant is that, since a Commissioner was appointed in an earlier suit, there is no necessity for appointment of a Commissioner in the present suit. The mere fact that in an earlier suit a Commissioner was appointed, who after inspecting the property, submitted a report and plan, will not be enough to reject the prayer for appointment of a Commissioner in the present suit, for the simple reason that the report and plan submitted in the other suit cannot be automatically imported to the present suit as evidence. The said report and plan cannot also be straight away led in evidence in the present suit. Moreover, it is an admitted fact that the Commissioner appointed in the previous suit did not measure the suit properties with reference to documents and revenue measurements.

6. The main issue that has arisen in the present suit is the fixation of the boundary and whether the defendants have encroached upon a portion of the property of the plaintiffs, which is described as plaint 'B' schedule property. The same can be ascertained if a Commissioner, with the help of a surveyor, measures the properties and submit a report. Such a report and plan will eliminate the necessity of voluminous evidence in respect of a simple issue. The learned trial Judge also made a pertinent observation that the dispute revolves around the boundary line between the properties of the plaintiffs and the first defendant, which are adjacent and the measurement of the property, with the help of the documents and survey measurements, will help the court to resolve the issue without having necessity to adduce more

oral evidence. The reason assigned by the trial court is laudable and hence the order passed by the trial court cannot be found fault with. There is no scope for interference with the said order in exercise of the power of this court under Article 227 of the Constitution of India.

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

17.03.2016

Index : Yes/No
Internet : Yes
asr

To

The District Munsif, Attur.

P.R.SHIVAKUMAR, J.

asr/-

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