



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2016

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P. (MD) No.2475 of 2015

K.Paramasivan .. Petitioner/Petitioner/Defendant

Vs.

M.Paramasivan .. Respondent/Respondent/Plaintiff

PRAYER: Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.119 of 2015 in O.S.No.92 of 2013 on the file of the learned District Munsif, Srivaikundam, dated 15.07.2015.

For Petitioner : Mr. M.P.Senthil

For Respondent : Mr.S.Meenakshi Sundaram

O R D E R

This Civil Revision arises out of the order passed by the learned District Munsif, Srivaikundam, in I.A.No.119 of 2015 in O.S.No.92 of 2013, dated 15.07.2015.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the records.

3. The said application was filed by the petitioner seeking appointment of an Advocate Commissioner under Order 26 Rule 9 of C.P.C.

4. According to the learned counsel for the petitioner, the respondent filed a suit in O.S.No.92 of 2013 for declaration and permanent injunction, against the Revision petitioner. The petitioner has filed written statement before the Trial Court. Thereafter, the case was posted for trial and evidence on the side of the plaintiff concluded, the chief examination on the side of the defendant over, at that stage, the Revision petitioner filed the present application for the appointment of Advocate Commissioner to measure the properties with the help of surveyor, so as to the dispute arose in the description of the suit property will be elicited, the Court has to decide the issue for the boundaries of the suit properties. Per contra, the Trial Court



erroneously dismissed the I.A., for appointment of Advocate Commissioner. Hence, the present Civil Revision petition has been filed by the Revision petitioner herein.

5. Per contra, the learned counsel for the respondent would submit that the respondent/plaintiff has filed the suit for declaration and injunction. In the suit property, the boundaries have been specifically mentioned in the suit. The claim of the respondent/plaintiff will be established on the basis of the oral and documentary evidence in the suit. Therefore, there is no necessity for appointment of the Advocate Commissioner to inspect the suit property as prayed in the application.

6. According to the learned counsel for the respondent, the burden always lies with the respondent/plaintiff to establish the title of the property. Further, the learned counsel for the respondent would submit that the present application has been filed by the petitioner, at that stage, D.W.1 was examined, therefore, the same is belated. The Trial Court, after considering the submissions of the parties concerned has rightly dismissed the application on the ground that the present application filed by the petitioner was belated. Therefore there is no warrant of interference by this Court.

7. It is an admitted fact that the respondent herein filed the suit in O.S.No.92 of 2013 before the learned District Munsif, Srivaikundam and the petitioner herein have filed the written statement in the month of September 2013. Thereafter, the matter has been taken up for examination of plaintiff and the evidence on the side of the plaintiff was examined and concluded. D.W.1 was examined, at that stage, the present application has been filed by the petitioner herein for the appointment of the Advocate Commissioner, to measure the suit property.

8. On perusal of the counter statement filed by the respondent herein would show that as far as the subject matter of the suit property in Survey No.250/1 is concerned, it can be proved by the plaintiff only on the basis of adducing the oral and documentary evidence before the Trial Court. Therefore, the respondent herein has strongly objected the aforesaid application filed by the Revision petitioner and it has also been submitted that the said application filed only with an intention to drag on the proceedings at the stage of the defendant's side evidence was examined. On perusal of the suit property, the plaintiff has described the boundaries in the scheduled property. The learned counsel for the respondent would rightly submit that the burden lies with the respondent to establish the title in the suit. Therefore, the application filed by the petitioner is belated. Hence, the application of the petitioner is rejected and the order passed by the Court below in I.A.No.119 of 2015 in O.S.No.92 of 2013, dated 15.07.2015 is confirmed.



9. Accordingly, the Civil Revision petition fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar

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/True Copy/

Sub Assistant Registrar

pmu

To

The District Munsif Court,
Srivaikundam.

+1cc to Mr.P.Senthil, Advocate Sr.No. 56505

+1cc to Mr.S.Meenakshi Sundaram Advocate Sr.No. 56486

JAM/28.11.16/CK/3p-4c

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