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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2016

CORAM

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

C.R.P. (PD) (MD)No.298 of 2016

and

C.M.P. (MD) .No.1191 of 2016

Paramasivam

... Petitioner

Vs.

Soman

... Respondent

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.655 of 2015 in O.S.No.20 of 2010 on the file of the District Munsif Court, Palani dated 17.12.2015.

For Petitioner : Mr.D.Venkatesh

ORDER

The Civil Revision Petition is filed against the fair and decreetal order passed in I.A.No.655 of 2015 in O.S.No.20 of 2010 on the file of the District Munsif Court, Palani dated 17.12.2015.

2. The petitioner is the plaintiff and the respondent is the defendant in the suit. The petitioner filed a suit in O.S.No.20 of 2010 on the file of District Munsif Court, Palani, for injunction restraining the defendant from interfering with the suit property. Along with the said suit, the petitioner filed an Interlocutory Application in I.A.No.40 of 2010 for appointment of an Advocate Commissioner to inspect the suit property and file a report. The Advocate Commissioner was appointed and he inspected the property and filed a report on 13.05.2012. Now, the petitioner has filed an I.A.No.655 of 2015 for appointment of an Advocate Commissioner or re-issue the warrant to the same Advocate Commissioner to inspect the suit property and file a report with regard to the physical features of the property.

3. According to the petitioner, the Advocate Commissioner by inadvertence has stated that there is a fencing in EF portion, but there is no such fencing. Therefore, he has filed the present Interlocutory Application in I.A.No.655 of 2015.

4. The respondent has resisted the same on the ground that the Advocate Commissioner inspected the suit property and filed a report on 13.05.2012. The petitioner, in his cross-examination, admitted the report of the Advocate Commissioner and admitted the said land belonged to the respondent and only



to drag on the proceedings, the petitioner has filed the present I.A.No.655 of 2015. The learned District Munsif, Palani, after considering the materials on record, dismissed the I.A.No.655 of 2015 filed by the petitioner on 17.12.2015. Against the said dismissal, the present Civil Revision Petition is filed.

5. The learned counsel for the petitioner submitted that the Advocate Commissioner by mistake mentioned that there is a fencing in EF portion. The petitioner, in his objection to the report of the Advocate Commissioner, stated that there is no fencing. The learned District Munsif, Palani erred in holding that after four years, physical features of the property would have changed and only the Court can resolve the issue. Therefore, he prayed for allowing the Civil Revision Petition.

6. Heard the learned counsel for the petitioner.

7. From the materials on record, it is seen that on the application filed by the petitioner, an Advocate Commissioner was appointed and he inspected the property and filed a report on 13.05.2012 and the petitioner filed an objection to the report of the Advocate Commissioner. In the circumstances, there is no necessity to re-issue the warrant or appoint another Advocate Commissioner to inspect the property and file a report. The learned District Munsif, Palani has noted that the petitioner can cross-examine the Advocate Commissioner in this regard, considering the objections filed by the petitioner. The learned District Munsif has given a valid and cogent reasons for dismissing the Interlocutory Application and he exercised its discretion properly and there is no reason warranting interference by this Court. Accordingly, the Civil Revision Petition is dismissed. It is open to the petitioner to approach the appropriate forum. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To
The District Munsif, Palani.
+ 1 CC TO MR.D.VENKATESH, ADVOCATE IN SR NO. 7839
AKV
TE/GSV-PM/ : 01/04/2016 : 2P/3C

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