



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.07.2016
CORAM

THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

C.R.P. (MD) No. 418 of 2016

and

C.M.P. (MD) No. 1805 of 2016

D. Hyder Ali

.. Petitioner/Petitioner/Plaintiff

Vs.

1. R. Sivakumar

2. G. Murugadhas

.. Respondents/Respondents/Defendants

PRAYER: Petition is filed under Article 227 of Constitution of India, to set aside the decreetal order dated 04.12.2015 passed in I.A. No. 84 of 2015 in O.S. No. 120 of 2010 on the file of the learned Subordinate Judge, Theni, by allowing this civil revision petition and to allow the I.A. No. 84 of 2015 in O.S. No. 120 of 2010 and to grant such relief.

For Petitioner : Mr. B. Senthilkumar

For Respondents : Mr. R. Suriyanarayanan

O R D E R

This Revision is directed against the order passed by the Subordinate Court, Theni in I.A. No. 84 of 2015 in O.S. No. 120 of 2010.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents and also perused the records.

3. The petitioner as plaintiff filed a suit for specific performance of the sale agreement dated 24.10.2008. The suit is being contested by the respondents by filing their written statements, dated 17.11.2009. The petitioner has filed an application before the Trial Court in I.A. No. 84 of 2015 for appointment of an Advocate Commissioner to note down the physical features of the suit property contending that the agreement was entered into for purchase of 29 cents, but some of the portions have been encroached by the third parties and to find out the extent of encroachment, an Advocate Commissioner has to be appointed.

4. The application was resisted by the respondents by filing a counter stating that the suit was filed in the year 2010 and on 04.11.2011, the suit was allowed to be dismissed for non-prosecution and this application is filed only to prolong the litigation.

5. The learned Judge dismissed the application observing that when the suit was posted in the special list, this application is filed to delay the proceedings and the petitioner can prove his case through some other mode.



6. The learned counsel for the petitioner relied upon the following Judgment in support of his contentions.

a) In **2016-1-L.W.159 Nallamma Naidu V. Paul Pandian & another**, this Court held as under:-

"The controversy arises from the pleadings of the parties cannot be demonstrated before the Court by any amount of oral evidence. In such circumstances, it would be just and necessary for this Court to have the lie of the property, physical features and measurements with respect to their respective title deeds, that will enable the Trial Court to take a correct decision in this matter. In this view of the matter, the impugned order is unsustainable in law."

b) In **C.R.P. (PD) No.1669 of 2011**, in that case, the Trial Court having found that the Commissioner's Report would help to elucidate the dispute between the parties, appointed an Advocate Commissioner. Objections to the Commissioner's Report was filed stating that the survey is not conducted as per the Field Map. An application was filed to set aside the Commissioner's Report, and for appointment of another Commissioner. However, the Trial Court re-issued the warrant to the same Advocate Commissioner to inspect the property. While setting aside the order, this Court remanded the matter to the Trial Court for fresh consideration.

7. In my considered view, both the decisions have no bearing on the facts of the present case.

8. It is settled law that an Advocate Commissioner can not be appointed to collect evidence for the parties and also to find out possession of the parties.

9. In such view of the matter, I do not find any perversity or illegality in the order impugned in this Revision. In fine, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/
Assistant Registrar(AE)

/TRUE COPY/

Sub Assistant Registrar

To

The Subordinate Judge, Theni.

+1cc to M/S.R.Suriyanarayanan, Advocate in SR.No.34854

+1cc to M/S.B.Senthilkumar, Advocate in SR.No.34987

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