

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE M. DURAISWAMY

C.R.P.(PD).No.1037 of 2017
and C.M.P.No.5045 of 2017

C.Kalidoss

... Petitioner

Vs

R.Elumalai

... Respondent

Civil revision petitions is filed under Article 227 of Constitution of India against the order and decreetal order dated 03.01.2017 made in I.A.No.706 of 2016 in O.S.No.249 of 2011 on the file of the District Munsif-cum-Judicial Magistrate Court at Sriperumbudur.

For petitioner : Mr.K.Sellathurai

ORDER

Challenging the fair and final order passed in I.A.No.706 of 2016 in O.S.No.249 of 2011 on the file of the District Munsif-cum-Judicial Magistrate, Sriperumbudur, the 2nd defendant has filed the above Civil Revision Petition.

2.The plaintiff filed suit in O.S.No.249 of 2011 for permanent injunction, recovery of possession and for mandatory injunction.

3.The defendants filed their written statement and are contesting the

suit. Subsequently, when the suit was posted for arguments, the 2nd defendant took out an application in I.A.No.706 of 2016 seeking for appointment of an Advocate Commissioner to note down the physical features with the help of Taluk Surveyor. The application filed by the 2nd defendant was opposed by the plaintiff.

4.It is settled position that an Advocate Commissioner cannot be appointed to collect evidence on behalf of the parties.

5.It is also pertinent to note that earlier in the suit, a Commissioner was appointed and the Commissioner also filed his report. Suppressing the appointment of an Advocate Commissioner on the earlier occasion, the present application has been filed by the 2nd defendant seeking for appointment of an Advocate Commissioner for the second time. That apart, present application has been filed at a belated stage (i.e.) when the suit was posted for arguments.

6.In these circumstances, I do not find any reason to interfere with the order passed by the trial Court. The trial Court has rightly dismissed the application.

7.The Civil Revision Petition is devoid of merits and the same is liable

to be dismissed.

8.The learned counsel appearing for the 2nd defendant/petitioner submitted that liberty may be given to the 2nd defendant to file his objections to the Commissioner's report.

9.In view of the submission made by the learned counsel for the petitioner, in the interest of justice, the 2nd defendant is given liberty to file his objections to the Commissioner's report within one week from the date of receipt of a copy of this order.

10.With these observations, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va/rsi

20.03.2017

Note: Issue order copy on 22.03.2017.

To

The District Munsif-cum-Judicial Magistrate Court,
Sriperumbudur

M. DURAISWAMY, J.
va/rsi

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