

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CRP (PD) No.1278 of 2017

and

CMP.No.5981 of 2017

Dhanalakshmi

..

Petitioner

Vs.

1. Kumaresan
2. Natchatram
3. Dhanalakshmi
4. Rani
5. Lakshmi

...

respondents

Prayer : Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 03.12.2016 in I.A.No.779 of 2016 in O.S.No.363 of 2015 on the file of the Principal District Munsif Court, Salem.

For Petitioner : Mr.V.Sekar

ORDER

This Civil Revision Petition has been filed against the order dated 03.12.2016, passed by the learned District Munsif Court, Salem, in I.A.No.779 of 2016 in O.S.No.363 of 2015, dated 03.12.2016.

2. The petitioner is the plaintiff and the respondents are the defendants in O.S.No.363 of 2015. The petitioner filed a suit in O.S.No.363 of 2015 for injunction restraining the respondents from disturbing the peaceful possession and enjoyment of the suit properties. The respondents filed the written statement denying the title of the petitioner and claimed that they have purchased the properties and they are in possession and enjoyment of the same.

3. According to the petitioner, the total extent of two items of the suit property is 0.0264.0 Sq meters (2840 sq.Feet), therefore she has filed I.A.No.779 of 2016 for appointment of Advocate Commissioner to inspect the suit property, note down the physical features of the suit property by measuring the suit property with the help of qualified surveyor and to file his report.

4. The respondents filed counter affidavit denying the averments made by the petitioner and submitted that the petitioner has filed the application for appointment of Advocate Commissioner only to drag on the proceedings and furthermore, the application for the appointment of Commissioner is not maintainable in the suit for permanent injunction.

5. The learned Judge on considering the averments mentioned in the affidavit, counter affidavit, arguments advanced by the counsel for the parties and the nature of relief sought for by the petitioner, dismissed the application filed by the petitioner on 03.12.2016, holding that the suit is only for bare injunction and the petitioner has not sought for declaration, when the title itself is in dispute by the respondents in the written statement.

6. Aggrieved against the same, the present Civil Revision Petition is filed.

7. Heard the learned counsel for the petitioner and perused the materials on record.

8. The learned counsel appearing for the petitioner contended that Advocate Commissioner can be appointed to find out the possession of the petitioner at any stage of the suit.

9. The petitioner has filed a suit for bare injunction. To get the relief sought for in the application filed in I.A.No.779 of 2016, it is for the petitioner to prove his possession and the respondents filed written

statement denying the title of the petitioner and claimed that they are in possession and enjoyment of the suit property. In the suit for injunction, the Advocate Commissioner need not be appointed. To the nature of relief sought for by the petitioner, there is no necessity to appoint the Advocate Commissioner. It is for the petitioner to prove that he is in possession and enjoyment of the suit property, by letting in oral and documentary evidence. The learned trial Judge after considering all the materials available on record, dismissed the application by giving valid and cogent reasons. Therefore, there is no illegality or irregularity warranting interference by this Court with the order dated 03.12.2016 passed by the Principal District Munsif Court, Salem.

10. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

06.04.2017

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To

The Principal District Munsif Court, Salem

V.M.VELUMANI, J

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