

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.1459 of 2017

M.S.Jayaprakash

.. Petitioner

Vs.

1. K.Kumar

2. S.Sakunthala

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decreetal order dated 09.09.2016 made in I.A.No.355 of 2014 in O.S.No.333 of 2014 on the file of the learned District Munsif at Coimbatore.

For Petitioner : Mr.S.Rajmakesh

ORDER

This Civil Revision Petition has been filed against the order and decreetal order dated 09.09.2016 made in I.A.No.355 of 2014 in O.S.No.333 of 2014 on the file of the learned District Munsif at Coimbatore.

2. The petitioner is the plaintiff and the respondents are the defendants in O.S.No.333 of 2014. The petitioner filed the suit

seeking to demarcate and to fix the boundaries of the suit properties after measuring the entire suit properties and also the properties of the defendants in accordance with the decree passed in O.S.No.556 of 1993 dated 27.04.1995, also the revenue records of the suit properties, for permanent injunction restraining the defendants, their men and agents or anybody from interfering with his peaceful possession and enjoyment of the suit property either by encroaching into the suit properties or otherwise. Along with the suit, the petitioner filed an application in I.A.No.355 of 2014 for appointment of an Advocate Commissioner to measure the suit properties and the properties of the respondents with the help of a qualified surveyor to demarcate the boundaries of the suit properties and direct him to file his report and plan.

3. The respondents/defendants filed counter and opposed the averments made in the application and submitted that the petitioner/plaintiff has shown wrong description of the property at the time of surveying the property. Before surveying the property, the petitioner or survey department has not given any notice to the respondents/defendants. With the help of Surveyor, the petitioner/plaintiff obtained a plan and based on that, the property was sub divided by the Tahsildar and prepared a wrong plan to the suit property. The respondents filed an appeal to the Revenue Divisional Officer, Coimbatore, to cancel the sub division issued by

the Tahsildar and the same is pending for consideration. On the petition given by the respondents, they were informed that the Tahsildar has recommended the cancellation of order of Sub Division Dated 08.07.2006. If the Advocate Commissioner is appointed to measure the suit properties with the help of surveyor, it will cause irreparable hardship to both parties as the said order of appointment would decide the relief in the suit.

4. Learned Judge, considering the averments made in the affidavit, counter affidavit and pendency of appeal before the Revenue Divisional Officer with regard to cancelling the subdivision of the property, dismissed the application by giving liberty to the petitioner to file a fresh application seeking for appointment of Advocate Commissioner after disposal of the appeal by the Revenue Divisional Officer.

5. Against the order dated 09.09.2016 made in I.A.No.355 of 2014 in O.S.No.333 of 2014 on the file of the District Munsif Court, Coimbatore, the present Civil Revision Petition is filed by the petitioner/plaintiff.

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

7. From the records, it is seen that the relief sought for by the petitioner in the application is one and the same relief as sought for in the suit. Therefore, the petitioner/plaintiff has to establish his case by letting in acceptable evidence during trial. If the petitioner succeeds in the suit, he will be entitled to measure and demarcate the property and fix the boundaries. Further, it is stated that the Appeal filed by the respondents to cancel the Sub Division is pending before the Revenue Divisional Officer, Coimbatore. The learned Judge has held that the petitioner can file a fresh application for appointment of Advocate Commissioner after the disposal of the said Appeal. In these circumstances, there is no error or illegality in the order passed by the trial Court warranting interference by this Court.

8. Accordingly, the Civil Revision Petition is dismissed. No costs.

20.04.2017

Index : Yes/No

Internet : Yes/No

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To

The District Munsif,  
Coimbatore.

**V.M.VELUMANI,J.**

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