

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1930 of 2017 and
C.M.P.No.9293 of 2017

G.Duraisamy

.. Petitioner

Vs.

P.Hariprasad

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and final order dated 13.04.2017 passed in I.A.No.261 of 2017 in O.S.No.331 of 2013 on the file of learned I Additional District & Sessions Judge, Thiruppur.

For Petitioner

: Mr.K.Sukumaran

ORDER

This Civil Revision Petition has been filed to set aside the fair and final order dated 13.04.2017 passed in I.A.No.261 of 2017 in O.S.No.331 of 2013 on the file of learned I Additional District & Sessions Judge, Thiruppur.

2. The petitioner is the 1st defendant in O.S.No.331 of 2013 and the respondent is the plaintiff. The respondent filed suit for partition and separate possession. The petitioner filed written statement along with counter claim in the month of March, 2014 and is contesting the suit. The respondent filed reply statement on 19.1.2016 to the counter claim filed by the petitioner. After framing issues, trial commenced. The respondent let in evidence and closed his side. The petitioner was examined as D.W.1 and his evidence was closed and the suit is posted for arguments. At that stage, the petitioner filed I.A.No. 261 of 2017 for appointment of Advocate Commissioner to inspect the property and note down the physical features.

3. According to the petitioner, the respondent deposed that he was in possession of the property from 1979 till he went to Chennai and there were coconut and mango tress and Well in the suit property, which are contrary to the averments in the plaint. The respondent was not able to give boundaries of the property, which reveals that he is not in possession of the suit property.

4. The respondent filed counter affidavit and stated that petitioner after his evidence was closed, has come out with the present petition only to drag on the proceedings and the respondent is seeking decree of partition and separate possession and question of possession is not an issue in the suit and hence prayed for dismissal of the suit.

5. The learned Judge considering the relief sought for in the suit by the respondent and that the petitioner has filed an application after evidence being let in and closed by the parties and Commissioner cannot be appointed to find out as to who is in possession of the property, dismissed the application.

6. Against the fair and final order in I.A.No.261 of 2017 dated 13.04.2017, the present civil revision petition is filed by the petitioner.

7. Heard the learned counsel for the petitioner.

8. From the materials available on record, it is seen that the suit is for partition and separate possession and the issue to be decided in the

suit is whether the respondent is entitled to a decree of partition or not. The question of possession of physical features of the property is not an issue in the suit. It is well settled that the Commissioner cannot be appointed to collect the evidence and to find out as to who is in possession of the property. Therefore, the Civil Revision Petition is devoid of merits.

9. In the result, the Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

20.06.2017

Speaking Order/Non-speaking Order
Index :Yes/No
ssd

To

The I Additional District & Sessions Judge,
Thiruppur.

V.M.VELUMANI, J.

ssd

C.R.P.(PD)No.1930 of 2017 and
C.M.P.No.9293 of 2017

20.06.2017

<http://www.judis.nic.in>