

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2017

CORAM:

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

CRP (PD) No.2021 of 2017

& C.M.P.No.9797 of 2017

Murugan

.. Petitioner

Vs.

Shivakumar

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 03.04.2017, made in I.A.No.330 of 2017 in O.S.No.191 of 2013 on the file of the Principal District Munsif Court, Kallakurichi.

For Petitioner : Mr.R.Kumaravel

ORDER

Civil Revision Petition is filed against the fair and decretal order dated 03.04.2017, made in I.A.No.330 of 2017 in O.S.No.191 of 2013 on the file of the Principal District Munsif Court, Kallakurichi.

2. The petitioner is the defendant and respondent is the plaintiff in O.S.No.191 of 2013. The respondent filed suit for permanent injunction restraining the petitioner from interfering with his peaceful possession and enjoyment of the suit property. The petitioner filed written statement and is contesting the suit. Trial commenced. The parties let in evidence. At this stage, the petitioner filed I.A.No.330 of 2017 for appointment of an Advocate Commissioner to inspect the suit property and to file his report.

3. According to the petitioner, the suit property was allotted to his father in the partition effected on 22.05.2012 and petitioner has constructed a thatched house and is in possession and enjoyment of the suit property. The respondent is claiming that the said suit property belongs to him. But he failed to prove the same. The petitioner is willing to prove that he is the owner of the property and prayed for appointment of an Advocate Commissioner.

4. The respondent filed counter affidavit and submitted that the petitioner's intention is only to drag on the proceedings and hence, prayed for dismissal of the application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials on record, dismissed the application, holding that the application for appointment of Advocate Commissioner is not maintainable and the petitioner has not given any reason.

6. Against the order of dismissal dated 03.04.2017, made in I.A.No.330 of 2017, the present civil revision petition has been filed by the petitioner/defendant.

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

8. The respondent has filed suit for permanent injunction restraining the petitioner from interfering with his peaceful possession and enjoyment of the suit property. According to the respondent, he is the owner of the suit property. On the other hand, the petitioner claims to be the owner of the suit property, as the same was allotted to his father in the partition, which was effected

on 22.05.2012 and he is in possession. The respondent having filed suit for permanent injunction, it is for the respondent to prove his possession and enjoyment and that the petitioner is trying to interfere with his possession. The petitioner is seeking for an appointment of Advocate Commissioner to prove that he is the owner of the property. An Advocate Commissioner cannot decide the title of the suit property and based on the report of the Advocate Commissioner, the title cannot be decided.

9. It is well settled that the parties must prove their case by letting in evidence and Advocate Commissioner cannot be appointed to collect the evidence.

10. In the circumstances, I hold that there is no irregularity or illegality in the order passed by the learned Judge dated 03.04.2017 warranting interference by this Court.

11. In the result, the civil revision petition is dismissed. No costs. Consequently, the connected civil miscellaneous petition is closed.

30.06.2017

Index : Yes/No
gsa/kj

V.M.VELUMANI, J.

gsa/kj

To

The Principal District Munsif Court
Kallakurichi.



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