

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2017

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

C.R.P.(PD) NO.2664 OF 2017
AND CMP NO.12713 OF 2017

Gnanamoorthy

... Petitioner

Vs.

1.Asokan

2.The Thasildar
Walajah Taluk,
Vellore District.

3.The District Collector
Vellore.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 07.04.2017 made in I.A.No.9 of 2017 in O.S.No.46 of 2014 on the file of the District Munsif cum Judicial Magistrate Court No.1, Walajapet, Vellore District.

For Petitioner : Mr.T.Dhanyakumar

ORDER

This Civil Revision Petition is directed against the dismissal of the interlocutory application filed to appoint an Advocate Commissioner to measure the respondent's house sit and to measure the breadth of the Palar river channel.

2. The petitioner is the plaintiff. The suit was filed for declaration and injunction. In order to find out the physical features of the suit property, an Advocate Commissioner was appointed in a previous suit in O.S.No.18 of 2004. Thereafter, the first defendant / first respondent herein, had encroached the property and the drainage is flowing over his property. Therefore, an application was filed to inspect the physical features of the property and to measure the Palar river channel on the basis of revenue records, with the assistance of the Village Administrative Officer and Surveyor.

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3. The admitted case is that the suit property was measured and boundaries were fixed in the earlier suit. Now, the petitioner has indulged in seeking for a relief, which is highly impossible to complete

within a short span of time. Already, the suit was posted for additional evidence on the side of the plaintiff. P.W.1 has already been cross examined and at that stage, the interference application was filed. The Trial Court has found that the prayer sought for in the application is unsustainable and hence, dismissed the application for appointment of Advocate Commissioner.

4. On considering the factual background of this case, it is clear that the suit property was measured and boundaries were fixed through an Advocate Commissioner appointed by the Court, in a previous litigation. If at all the petitioner wants to prove his possession and identity of the property, he should let in evidence and substantiate the same through acceptable documents. Whereas, the application was filed at the stage that when the suit was posted for further evidence of the plaintiff. The attempt is only to collect evidence through appointment of Advocate Commissioner. Further, the prayer to measure the length and breadth of Palar river channel is highly improbable. More so, when the clear cut boundaries, measurements and exact breadth were not furnished, by the petitioner and it is not available in the revenue records, the attempt can

be construed as one to protract the proceedings and not with an *bonafide* intention. Therefore, the Trial Court has rightly dismissed the application filed by the petitioner at the belated stage, with an unsustainable relief. I do not find any discrepancy in the order passed by the Trial Court and hence, no interference is warranted.

5. Accordingly, the Civil Revision Petition stands dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

16.08.2017

Index : Yes/No
Internet : Yes/No
TK

To

The District Munsif cum
Judicial Magistrate Court No.1
Walajapet,
Vellore District.

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M.GOVINDARAJ, J.

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