

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.02.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CIVIL REVISION PETITION (PD) No.3471 of 2014
and
M.P.No.1 of 2014

1.A.Periyasamy
2.T.Chinnasamy
3.A.Ramasamy
4.Tmt.G.Pappa
5.C.Devendran
6.A.Rajendran
7.T.Ramasamy

.. Petitioners

vs.

1.M.Duraisamy
2.D.Paranjyothi
3.D.Chinnasamy
4.A.Ravi alias Ravichandran

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 01.08.2014 made in I.A.No.1400 of 2011 in O.S.No.329 of 2011 on the file of the District Munsif Court, Attur.

For Petitioner ... Mr.P.Ganesan

ORDER

The present revision petition is filed, challenging the fair and decreetal order passed in I.A.No.1400 of 2011 in O.S.No.329 of 2011 dated 01.08.2014.

2. The petitioner is the plaintiff who filed the suit in O.S.No.329 of 2011 for declaration and permanent injunction. On a plain reading of the plaint, it is found that the description of the suit schedule property is well set out. Further, the plaintiff who filed the suit is also very much assertive with regard to the metes and bounds of the suit schedule property set out in the plaint. In spite of this, the petitioner/plaintiff filed an application seeking appointment of an Advocate Commissioner by stating that there are some encroachments in the pathway of the suit schedule property and therefore, it is necessary to appoint an Advocate Commissioner to measure the property and find out the truth behind that statement. The trial Court made a finding that such a measurement and identification are not required, since the petitioner/plaintiff has very clearly set out the description of the property with all metes and bounds and therefore, appointment of an Advocate Commissioner is not required in the present case.

3. This Court is of the view that appointment of an Advocate Commissioner is to be permitted only when the Court is of the view that identification or finding out the truth is just and necessary for effective adjudication of the suit. Appointment of an Advocate Commissioner shall not be allowed in a routine manner, since it will affect the rights of either parties while defending the case. The parties should not be allowed to collect evidence or to improve the case through the report of an Advocate Commissioner. Therefore, the Courts are to be very cautious in the matter of appointment of an Advocate Commissioner and it is a practice that the parties are filing petition after petition seeking appointment of an Advocate Commissioner in order to develop their case or to collect the evidence and such practice of filing application is to be deprecated and this Court cannot encourage such attitude of the parties to the suit. Appointment of an Advocate Commissioner is necessary only for the effective adjudication of the suit and it is the bounden duty of the plaintiff who filed the suit to establish his case by filing necessary documents and adducing evidence before the trial Court.

S.M.SUBRAMANIAM,J.,

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4. Such being the proposition, this Court is of the opinion that the findings given by the trial Court are sound enough for rejection of the petition seeking appointment of an Advocate Commissioner and accordingly, the present revision petition is devoid of merits and the order passed in I.A.No.1400 of 2011 in O.S.No.329 of 2011 is confirmed and this C.R.P.No.3471 of 2014 is dismissed. No order as to costs. Consequently, connected M.P. is closed.

5. The learned counsel for the petitioner represents that the suit is pending for the past five years and a direction for speedy disposal of the suit is highly just and necessary. Considering the arguments advanced, this Court is inclined to direct the trial Court to dispose the suit as early as possible.

09.02.2017

Index:Yes
Internet:Yes

To

The District Munsif Court, Attur

**C.R.P.(PD)No.3471 of 2014 and
M.P.No.1 of 2014**

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