

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

C.R.P. (PD) No.4310 of 2017
and
C.M.P.No.20259 of 2017

P.Kalimuthu

.. Petitioner

Vs

1. P.Selvaraj

2. K.Murugasamy

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decreetal order dated 13.04.2017 passed in I.A.No.603 of 2017 in O.S.No.68 of 2017 by the learned District Munsif Judge, Avinashi.

For Petitioner : Mr.S.S.Swaminathan

ORDER

This revision petition is filed to set aside the Fair and Decreetal order dated 13.04.2017 passed in I.A.No.603 of 2017 in O.S.No.68 of 2017 by the learned District Munsif Judge, Avinashi.

2. The first respondent has filed the suit in O.S. No.68 of 2017 against the petitioner and the 2nd respondent, for permanent injunction restraining from interfering with his peaceful possession. In the aforesaid suit, he also filed an application in I.A. No.603 of 2017 under Order 26 Rule 9 and Section 151 of CPC to appoint an Advocate Commissioner with the assistance of Taluk Surveyor to note down the physical features and measure the property and fix a boundary stone on the side of the respondents property and file a report. The court below allowed the said application for appointment of Advocate Commissioner. Pursuant to the said order, he filed an application in I.A. No. 915 of 2017 to provide police protection for the Advocate Commissioner to measure the suit property. The said application was also allowed by the court below. The petitioner has filed revision petition in CRP No. 4184 of 2017 against the said order and the same is pending. This revision is filed challenging the appointment of Advocate Commissioner ordered in I.A. No. 603 of 2017 dated 13.04.2017.

3. According to the petitioner, the suit has been filed by the first respondent for permanent injunction and therefore appointment of

an Advocate Commissioner is unsustainable in law and therefore the order passed by the court below is liable to be set aside.

4. The specific case of the first respondent, is that the 1st defendant is the owner of the suit properties, executed in his favour vide a gift deed dated 27.05.2015 by the 2nd defendant. The 1st respondent/ plaintiff purchased the suit properties from the 1st defendant vide sale deed dated 18.01.2016. Since the 2nd defendant/ petitioner tried to encroach the plaintiff's property by forming a ridge, removing the boundary stones, he was constrained to file the suit for permanent injunction. Under such circumstances, the first respondent/ plaintiff filed the application seeking for appointment of Advocate Commissioner to measure the suit properties and fix the boundary stones. Since the same was objected by the 2nd defendant/ petitioner herein, he filed an application in I.A. No. 915 of 2017 for police protection. A written statement has also been filed by the revision petitioner, specifically stating that the settlement/gift deed executed in favour of his son on 27.05.2012 was obtained by cheating and that the revision petitioner was not aware of the contents of the document. He has been cheated by his

son, the first defendant. However, the said settlement deed has not been challenged by the revision petitioner in the appropriate forum. Therefore, this Court is not inclined to interfere with the order of the court below, allowing the Interlocutory Application.

5. The Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

28.11.2017

Index : Yes/ No

Speaking order/ Non speaking order

[Issue order copy within one week]

avr

To

The District Munsif Judge,
Avinashi.

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D. KRISHNAKUMAR J.,

avr



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