

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2017

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD).No.468 of 2017
and
C.M.P.No.2299 of 2017

P.Pachaiammal

.. Petitioner

Vs.

1. D.Comady
2. Jayakumar
3. A.Sumathi
4. Arivazhagan

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order, dated 03.01.2017 made in I.A.No.307 of 2016 in O.S.No.54 of 2007 on the file of the Additional Sub-Court, Puducherry.

For petitioner : Mr.R.Thiagarajan

For respondents : Mr.H.Manojin for RR-1 and 2 (caveators)

ORDER

The plaintiff is the revision petitioner herein. Challenging the order dated 03.01.2017 partly disallowing the relief sought for, he has filed this revision. I.A.No.307 of 2016 was filed for appointing an Advocate

Commissioner under Order 26 Rule 1 CPC to record the evidence of P.W.1 for cross-examination made by the respondents/defendants at her home 'A' schedule property in O.S.No.54 of 2007 and simultaneously to find out whether the entirety of 'A' schedule property is physically divided as per 'B' and 'C' schedule of properties, vide the fabrications of the sale deed, dated 19.01.2006 of the respondents 1 and 3 herein and to note down the physical features of 'A' schedule property and file report. The trial Court has allowed the application with respect to the relief of appointing the Advocate Commissioner to record the evidence of P.W.1 for cross-examination at her residence and so far as the appointment of Advocate Commissioner to note down the physical features of 'A' schedule suit property, the I.A. was dismissed as not relevant. The suit is filed by the plaintiff for declaration that the sale deed, dated 19.01.2006 of the first defendant, is null and void, for permanent injunction restraining the defendants 1 and 2 from disturbing or interfering with the plaintiff's peaceful possession of the 'A' schedule property and also for grant of permanent injunction restraining the first defendant or her agents or any one claiming through her to alienate the 'B' schedule of property to the third parties under the alleged sale deed, dated 19.01.2006. The relief seeking appointment of Commissioner to note down the physical features of the property, was beyond the suit relief and it is not relevant for proper adjudication of the suit. As the suit itself is only

challenging the said sale deed as a whole, the question of identification or demarcation of the suit properties, does not arise. Hence, the trial Court has rightly dis-allowed that portion of the prayer made in the application. There is no infirmity in the impugned order passed by the trial Court. The Civil Revision Petition is accordingly dismissed. No costs. C.M.P. is closed.

15.02.2017

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Copy to

The Additional Sub-Judge, Puducherry.

PUSHPA SATHYANARAYANA, J

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