

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(PD).No.788 of 2017
and C.M.P.No.3894 of 2017

V.Vasanthan

... Petitioner

Vs.

S.Ramalingam

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.3948 of 2016 in O.S.No.548 of 2015 dated 17.11.2016 on the file of the VI Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.C.K.M.Appaji

For Respondent : Mr.R.Sankarakutralingam

ORDER

Challenging the order passed in I.A.No.3948 of 2016 in O.S.No.548 of 2015 on the file of the VI Assistant Judge, City Civil Court, Chennai, the defendant has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.548 of 2015 for bare injunction.

3.The defendant filed his written statement and is contesting the suit. In the said suit, the plaintiff took out an application in I.A.No.3948 of 2016 seeking for appointment of Advocate Commissioner to identify the suit property with the assistance of a Taluk Surveyor. The defendant filed his counter and opposed the application. The trial Court allowed the application and appointed an Advocate Commissioner to identify the suit property with the help of a qualified Taluk Surveyor.

4.It is settled position that a party to the suit cannot collect evidence through an Advocate Commissioner. The parties should prove their case by adducing proper oral and documentary evidences. It is also settled position that in a suit for bare injunction, the issue that has to be decided is with regard to possession. An Advocate Commissioner cannot give a finding with regard to the possession of the parties. That being the case, the plaintiff has to prove his case by adducing oral and documentary evidences in support of his case. He has to establish his possession over the suit property by oral and documentary evidences and not through an Advocate Commissioner. In these circumstances, the trial Court should not have appointed an Advocate Commissioner and allowed the application in I.A.No.3948 of 2016.

5.For the above reasons, the fair and decreetal order passed in I.A.No.3948 of 2016 in O.S.No.548 of 2015 are set aside. In the result, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

06.03.2017

To

The VI Assistant Judge,
City Civil Court,
Chennai.

M.DURAISWAMY,J.
va

**C.R.P.(PD).No.788 of 2017
and C.M.P.No.3894 of 2017**

06.03.2017

<http://www.judis.nic.in>