

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2017

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

CRP(PD).No.196 of 2015

and

MP.No.1 of 2015

Mahalingam

...Petitioner

Versus

Ayyakannu

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against Fair and Final order in I.A.No.336 of 2014 in O.S.No.173 of 2011 dated 02.09.2014 pending on the file of District Munsif Court, Mannargudi.

For Petitioner : Mr.A.Sundaravadhanan

For Respondent : Mr.M.V.Venkateshan

ORDER

The defendant, aggrieved by the dismissal order of the application for appointment of Advocate Commissioner in a suit for injunction has filed the above revision petition. The suit property is about 20 cents in a larger extent of 0.15.37 hectares. The defendant has taken out an application in I.A.No.336 of 2014 in O.S.No.173 of 2011 to appoint a Commissioner to measure the entire extent of the suit property with the help of the Taluk Surveyor. The said application was dismissed after contest.

2. In the application filed for appointment of Commissioner, the applicant is trying to collect evidence to establish his case. So far as injunction is concerned, only possession has to be proved, which cannot be ascertained by appointing an Advocate Commissioner. The defendant has tried to collect evidence in the suit filed by the plaintiff to find out the factum of possession. If the plaintiff has come up with any specific relief, the burden is upon him to establish his possession by letting

in evidence. The defendant has no role to play in that. The defendant can let in independent evidence and prove his possession. When there is no dispute with respect to the identity & extent of property, appointment of Commissioner is unnecessary especially at the instance of the defendant. Hence, the application was rightly dismissed by the trial Court, which does not warrant any interference.

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

30.01.2017

Index : Yes / No
Internet : Yes / No

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To
The District Munsif,
District Munsif Court,
Mannargudi.

PUSHPA SATHYANARAYANA.J
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