

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2017

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.(PD).No.556 of 2014
and
M.P.No.1 of 2014

R.Shanmugasundaram

.. Petitioner

Vs.

1. Veerammal
2. Venkatesan

.. Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 17.01.2014 in I.A.No.809 of 2013 in O.S.No.125 of 2013 on the file of the Principal District Munsif Court, Tiruchengode.

For petitioners : Mr.S.M.S.Shriram Narayanan

For respondents : No appearance

ORDER

The plaintiff is the revision petitioner herein. He has filed this C.R.P. challenging the order appointing a Commissioner to measure the properties of the plaintiff and the defendants and to fix boundaries between their

properties.

2. The suit is filed by the plaintiff for permanent injunction restraining the defendants from causing any damage to the suit properties on the side of the Eastern wall and sloping roofs or from in any way interfering with the peaceful possession and enjoyment of the suit properties. The application in I.A.No.809 of 2013 was filed by the defendants seeking appointment of a Commissioner with the assistance of a Taluk Surveyor to note down the physical features and also for taking measurements of the suit properties, suit wall and the Western side and Eastern side of the suit wall and fix the boundaries between the properties of the plaintiff and the defendants and to file report. When the suit is one for bare injunction, it is for the plaintiff to show the boundary lines to the properties between himself and the defendants. The defendants in the suit for injunction, need not seek for appointment of a Commissioner for gathering evidence to prove their case. The defendants seem to claim not only the right over the suit wall, but also the space in between the properties of both the plaintiff and the defendants. Both the parties have not sought for declaration of title to the suit wall. When the question of title is not in dispute and when the plaintiff is sure about what he is seeking for in the suit, there is no necessity for appointment of Advocate Commissioner. The prayer in the I.A. for

appointment of Advocate Commissioner shows that the defendants are indirectly trying to gather evidence to prove their case. Being a suit for bare permanent injunction, and only the factum of possession that has to be gone into, there is no necessity for appointing a Commissioner. Even assuming for a moment that the measurements of the suit wall in the properties of both the parties, is necessary for deciding the suit, it is for the plaintiff to prove the same and the application filed by the defendants ought not to have been allowed.

3. Accordingly, the impugned order of the Court below, dated 17.01.2014 is set aside. The Civil Revision Petition is allowed. The learned Principal District Munsif, Tiruchengode is directed to dispose of the suit as expeditiously as possible. No costs. Consequently, the Miscellaneous Petition is closed.

04.01.2017

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Copy to
The Principal District Munsif, Tiruchengode.

PUSHPA SATHYANARAYANA, J

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