

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2017

CORAM :

THE HONOURABLE MR.S.M.SUBRAMANIAM

C.R.P(PD).No.59 of 2014
and M.P.No.1 of 2014

A.Meganathan .. Petitioner

Vs.

S.Ramalingam .. Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 04.09.2013 passed in I.A.No.160 of 2013 in O.S.No.23 of 2013 on the file of the learned District Munsif, Coonoor.

For Petitioner : Mr.K.F.Manavalan

For Respondent : Mrs.AL.Ganthimathi

ORDER

The revision petitioner is the defendant in the suit and the suit is for recovery of possession. During the pendency of the suit, the revision petitioner filed an application seeking appointment of Advocate Commissioner. Challenging the same, the revision petitioner filed this revision petition.

2.Learned counsel for the petitioner contended that the suit is for recovery of possession and the petition seeking appointment of an Advocate Commissioner is filed in respect of possession. In other words, a reference is made to find out the encroachment in the suit schedule property. Indirectly if the fact regarding the encroachment is found, then it amounts to assessing the possession of the respective parties. The primary principle regarding the possession is that the parties claiming possession has to prove before the court that he is in possession. The Advocate Commissioner cannot be appointed to prove regarding the possession of the property by the parties.

3.Learned counsel appearing for the respondent opposed the petition by stating that the petition seeking Advocate Commissioner is filed in order to identify the property and to find out the extent of encroachment made. The counsel contended that no reference is made out to find out the possession and therefore the Trial Court is right in appointing the Advocate Commissioner.

4.Considering the rival contentions raised by both the learned counsel, this Court is of the view that finding out the extent of

encroachment will provide a lead regarding the possession and it is an indirect way of collecting evidence or otherwise. It is a smart way of filing the petition and the same to establish that a particular portion is occupied by a third person. Such an attitude of the parties should be deprecated and Courts should not be used as a tool to find the possession of a party and establish their case through the report if submitted by the Advocate Commissioner. Such being the proposition, this Court is not inclined to accept the findings of the Trial court and the appointment of an Advocate Commissioner in the facts and circumstances of the present case, is un-necessary.

5.It is the duty of the plaintiff, who instituted the suit, to establish his case by adducing oral and documentary evidence and the parties to the suit cannot file petition seeking appointment of an Advocate commissioner to collect evidence one way or other directly or indirectly. Accordingly, the present petition deserves consideration and the fair and decreetal order passed in I.A.No.160 of 2013 in O.S.No.23 of 2013 on the file of the learned District Munsif, Coonoor dated 04.09.2013 is set aside and this petition is

S.M.SUBRAMANIAM,J.

vga

allowed. Consequently, connected miscellaneous petition is closed.

No order as to costs.

24.02.2017

Index: Yes/ No

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To

The District Munsif, Coonoor.

C.R.P(PD).No.59 of 2014

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