

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.(PD).No.77 of 2014
and M.P.No.1 of 2014

Kaliammal

... Petitioner

Vs.

C.Gopal

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 20.11.2013 made in I.A.No.979 of 2013 in I.A.No.613 of 2013 in O.S.No.290 of 2008 on the file of the Additional District Munsif Court, Tiruchengode.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.E.P.Senniyangiri

ORDER

The facts in nut-shell required to be considered for the purpose of disposing of the present revision petition are that the revision petitioner is the plaintiff in the suit in O.S.No.290 of 2008 for declaration and permanent injunction.

2. During the pendency of the suit, the defendant filed an application seeking for appointment of an Advocate Commissioner and the same was allowed by the trial Court. The Commissioner, so appointed by the trial Court, is yet to submit his report. At this point of time, the revision petitioner filed an application in I.A.No.979 of 2013 in order to stretch the scope of the Advocate Commissioner and requested the Court to direct the Advocate Commissioner to find out the actual portion demarcated in the Map submitted by the revision petitioner before the trial Court. The trial Court rejected the petition and challenging the same, the present revision is filed.

3. The learned counsel appearing for the petitioner contended that it is the extension sought for before the trial Court to examine the identity of the property further by the Advocate Commissioner and therefore, no prejudice would be caused to the other side in the event of allowing the petition. Further, it is contended that the revision petitioner has submitted a Map and according to the Map, he is in possession of the portion, which is disputed by the respondent. Therefore, it is necessary to measure the disputed portion, enabling him to prove his case.

4.The learned counsel appearing for the respondent opposed by stating that the Map produced by the revision petitioner was prepared by him and the genuineness of the same cannot be accepted at this stage before commencement of the trial. Further, based on the Map produced by the revision petitioner, the trial Court has rightly rejected the petition, since the scope of the Advocate Commissioner cannot be extended at the whimsy and fancies of the revision petitioner only with an intention to establish the Map prepared by him.

5.Considering the submissions made by the learned counsel for the petitioner and the learned counsel for the respondent, this Court is of the view that it is the case of declaration and permanent injunction and the respective parties are to prove their case by producing oral and documentary evidences before the Court and the scope of the Advocate Commissioner has to be restricted to clarify the doubt with regard to the genuineness, if arises in the minds of the trial Court and not otherwise. In the case on hand, an Advocate Commissioner was already appointed, who is in the process of completing the task and yet to submit a final report and at this point of time, another petition was filed to enhance the scope of the Advocate Commissioner and during that process, the revision petitioner has

submitted a Map prepared, which cannot be relied upon at this stage by the trial Court and all these aspects are to be adjudicated during the trial and no finding can be given at this stage. The trial Court has rightly come to the conclusion that in order to determine the metes and bounds of the property stated by the revision petitioner in his Map, the Court cannot be used as a tool and an Advocate Commissioner cannot be appointed to find out the genuineness or otherwise of the Map submitted by the revision petitioner before the trial Court. Such being the finding of the trial Court, this Court is not inclined to consider the grounds raised in the revision petition.

6. Accordingly, the fair and decreetal order passed in I.A.No.979 of 2013 in O.S.No.290 of 2008 dated 20.11.2013 is confirmed. In the result, the Civil Revision Petition in C.R.P.(PD).No.77 of 2014 is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Index : Yes
Internet : Yes
va

24.02.2017

To

1.The Additional District Munsif Court,

Tiruchengode.

S.M.SUBRAMANIAM,J.
va

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