

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M. DURAISWAMY

C.R.P.(PD).No.3525 of 2016

Muniya Goundan @ Muniraj

... Petitioner

Vs.

1.Palanisamy

2.Muniyan

3.Gopal

4.Arukkani

5.Rajamanickam

... Respondents

(R2 to R5 are pro-forma parties and hence given up in this CRP as no relief prayed against them)

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 24.06.2016 passed in I.A.No.1508 of 2015 in I.A.No.721 of 2009 in O.S.No.210 of 2009 on the file of the District Munsif, Sankari.

For Petitioner : Mr.R.Nagasundaram

For Respondents : Mrs.A.Arunmozhi (R1)

R2 to R5 - given up

ORDER

Challenging the fair and final order passed in I.A.No.1508 of 2015 in I.A.No.721 of 2009 in O.S.No.210 of 2009 on the file of the District Munsif, Sankari, the 5th defendant has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.577 of 2015 for permanent injunction. The 5th defendant filed his written statement and is contesting the suit.

3.In the said suit, the plaintiff took out an application in I.A.No.721 of 2009 seeking for appointment of an Advocate Commissioner to note down the physical features. The trial Court allowed the application and appointed an exparte Advocate Commissioner to note down the physical features. The Advocate Commissioner also inspected the suit property and filed his report. Since the 5th defendant found that the Advocate Commissioner had exceeded the scope of the commission, he filed his objections to the Commissioner's report, which was also taken on record. Subsequently, the 5th defendant took out an application in I.A.No.1508 of 2015 to scrap the Advocate Commissioner's report, since the Commissioner had exceeded the scope of the commission. The application filed by the 5th defendant was opposed by the plaintiff stating that there is no necessity for scrapping the report. The trial Court, taking into consideration the case of both parties, dismissed the petition.

4.It is settled position that the Advocate Commissioner's report is not conclusive and the findings given by the Advocate Commissioner should be

corroborated by the parties by adducing oral and documentary evidences.

5. In the case on hand, the 5th defendant has filed his objections, which must be taken into consideration by the trial Court at the time of deciding the suit. The trial Court dismissed the petition on the ground that the Advocate Commissioner's report and plans were marked as Exs.C1 to C3 while examining P.W.1.

6. Though the Advocate Commissioner's report and plans were marked through P.W.1, it is always open to the 5th defendant to examine the Advocate Commissioner under Order 26 of the Civil Procedure Code. The 5th defendant can examine the Advocate Commissioner and clarify the findings given by him in his report.

7. It is settled position that a decree cannot be passed solely on the findings given by the Advocate Commissioner. The parties have to establish their cases by oral and documentary evidence. The Advocate Commissioner cannot be appointed to collect evidence on behalf of a party to the proceeding.

8. In these circumstances, though I am not interfering with the order passed by the trial Court, I make it clear that the trial Court should consider

the objections filed by the 5th defendant to the Commissioner's report while deciding the suit. Liberty is also given to the revision petitioner/5th defendant to examine the Advocate Commissioner and to clarify the findings given by him in his report. It is needless to say that the plaintiff should establish his case by adducing oral and documentary evidence before the trial Court.

9.I do not find any error or irregularity in the order passed by the trial Court. With these observations, the Civil Revision Petition is dismissed.

10.Since the suit is pending from the year 2009, I direct the District Munsif, Sankari to dispose of the suit in O.S.No.210 of 2009, on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this order. No costs.

Index : No
Internet : Yes
va

17.03.2017

To

The District Munsif,
Sankari.

M. DURAISWAMY,J.
va

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