

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.06.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No. 2843 of 2013 and
M.P.No.1 of 2013

Veerasamy

...Petitioner

Vs

Vinayagam

...Respondent

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal orders dated 06.07.2013 passed in I.A.No.78 of 2013 in O.S.No.42 of 2011 on the file of the District Munsif Court, Ranipet, Vellore District.

For Petitioner : Mr.P.Mani

For Respondent : No Appearance

ORDER

The petitioner, in a suit for injunction, filed an application for Commission in I.A.No.78 of 2013. The learned District Munsif, Ranipet, dismissed the said application on the ground that there is no need for appointment of Advocate Commissioner in a suit for injunction. The said order is under challenge in this Civil Revision Petition.

2. Heard the learned counsel for the petitioner. None appeared on behalf of the respondent.

3. The petitioner laid the suit for injunction in respect of the property situated in S.No.139/1, Ozhalai Village, Arcot Taluk, Vellore District. The suit was resisted by the respondent by filing written statement. The claim made by the petitioner that there is a channel on the southern or on the northern side of the property was denied by the respondent in his written statement. The respondent further contended that the attempt of the petitioner is to claim right in respect of his property in S.No.133/4.

4. The dispute raised by the respondent in his written statement made the petitioner to file an application for Commission in I.A.No.78 of 2013.

5. The learned Trial Judge dismissed the application for appointment of Advocate Commissioner on the ground that being a suit for injunction, there was no need for such appointment. The other reason appears to be the advance stage of the trial.

6. The averments contained in the plaint and the contentions taken by the respondent in the written statement *prima facie* indicates that there is dispute with regard to the boundary. It would be in the interest of both the parties to fix the boundary on the basis of the documents. The respondent in

his written statement took up a specific contention that there is no channel as contended by the petitioner on the southern or on the northern side of the property. Such contention cannot be decided only on the basis of oral evidence. In case, Advocate Commissioner is appointed and a report is called for along with plan, it would enable the Trial Court to decide the matter in an effective manner. I am therefore of the view that the Trial Court was not correct in dismissing the application filled by the petitioner.

7. In the result, the order dated 6 July, 2013 is set aside. The application in I.A.No.78 of 2013 is allowed.

8. The Civil Revision Petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

06.06.2017

svki/si

K.K.SASIDHARAN,J.

si

To

The District Munsif Court,
Ranipet, Vellore District.

C.R.P.(P.D.) No. 2843 of 2013

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