



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.11.2017

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(PD) (MD)No.1931 of 2014

and

MP(MD)No.1 of 2014

G.Chellappan @ Neeravi Naicker

... Petitioner

vs.

C.Ayyanappan

... Respondent

Petition filed under Article 227 of the Constitution of India, against the order and decree made in I.A.No.1203 of 2013 in O.S.No.300 of 2013 dated 12.03.2014 on the file of the Principal District Munsif Court, Srivilliputtur.

For Petitioner : Mr.M.Thirunavukkarasu

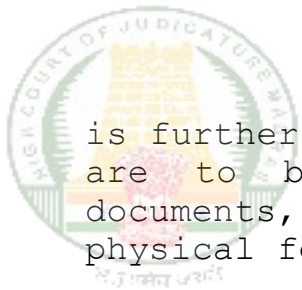
For Respondent : Mr.G.Marimuthu

ORDER

This revision petition has been filed against the order and decree made in I.A.No.1203 of 2013 in O.S.No.300 of 2013 dated 12.03.2014 on the file of the Principal District Munsif Court, Srivilliputtur.

2.The revision petitioner is the plaintiff in O.S.No.300 of 2013 and the respondent is the defendant. The suit was filed for permanent injunction not to encroach or put up any construction over the suit schedule property. The defendant filed the written statement and the suit is pending. While so, the plaintiff filed I.A.No.1203 of 2013 for appointment of Advocate Commissioner to note down the physical features of the suit property with the help of surveyor. The Trial Court dismissed the said application. Challenging the said order, this revision petition has been filed.

3.Learned counsel for the petitioner submitted that the revision petitioner is having 2/3 share in the suit property, but the respondent claiming that he is the absolute owner of the entire suit property, started construction of compound wall around the suit property including the share of the plaintiff. Hence, the petitioner filed interlocutory application for appointment of Advocate Commissioner to measure the suit property with the help



is further observed that title and possession of the suit property are to be ascertained through the sale deeds and revenue documents, for which, appointment of commissioner to note down the physical features of the suit property is not necessary.

10. As rightly held by the Trial Court, whether the plaintiff and defendant are entitled to 2/3 and 1/3 shares respectively in the suit property or whether the suit property is a common property is to be decided in the suit. Therefore, it is for the plaintiff to prove his case by adducing oral and documentary evidence and he cannot get the Commissioner appointed so as to cull out evidence in his favour. Appointment of Commissioner would only lead to unnecessary dragging of the suit. Order 26 Rule 9 is not attracted in this case since construction over the suit property is not under dispute, but the title itself is under dispute. Hence, I do not find any infirmity or perversity in the order of the Trial Court and the same is confirmed. The Civil Revision Petition is dismissed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif Court,
Srivilliputtur.

+1cc to Mr.M.Thirunavukkarasu, Advocate Sr.No.84734

BALA

VB/MR/KKR/SAR2/08/11/2017/3P/3C

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