

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:28.04.2018

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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRP(PD)No.1519 of 2018

and

C.M.P.No.8118 of 2018

P.Muniyammai

.. Petitioner

Vs.

E.Thenmozhi

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decretal order made in I.A.No.757 of 2017 in O.S.No.159 of 2012 dated 04.01.2018 by the learned District Munsif, Sankarapuram.

For Petitioner :M/s.S.Kanmani

सत्यमेव जयते

ORDER

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This Civil Revision Petition has been filed by the petitioner/plaintiff against the fair and decretal order made in I.A.No.757 of 2017 in O.S.No.159 of 2012 dated 04.01.2018 by the learned District Munsif, Sankarapuram.

2. The learned counsel for the appellant would submit that the appellant has filed the suit for declaration and consequential relief of delivery of possession of the suit property encroached by the respondent. The same was denied by the respondent in her written statement. During the pendency of the suit, the petitioner has filed an application to appoint an Advocate Commissioner to measure the suit property with the help of a qualified surveyor. When the dispute is regarding encroachment and the petitioner produced the sale deed, patta, A-Register, Tax receipt, Survey Map, Patta Pass Book for proving her legal right over the suit property, refusal of appointment of Advocate Commissioner by the learned Trial judge observing that the plaintiff has to prove her case by adducing oral and documentary evidence is bad in the eye of law. Though the petition for appointment of Advocate Commissioner has been filed prior to the commencement of trial, the learned trial Judge has erroneously dismissed the same on the ground that the Interlocutory Application was filed at a belated stage.

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3. The suit is filed in the year of 2012 for impleading the beneficiaries of the settlement deed, that was dismissed by the trial Court and he already filed a revision before this Court. Subsequently,

the revision petitioner filed yet another application before the trial Court to amend the prayer. After hearing both sides, the application was dismissed by the trial Court. Subsequently when the suit was posted in the list for trial, the Interlocutory Application in I.A. No.757 of 2017 filed for appointment of Advocate Commissioner and after the enquiry the said application was dismissed. Aggrieved by the order, the present revision petition is filed.

4. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

5. The suit is of the year 2012 itself, whereas he has filed this application to appoint an Advocate Commissioner only in the year 2017 that too when the suit was listed for trial, the petitioner has not taken steps in the earlier occasion. No reason has been given by the petitioner as to why he has not taken any steps for five years. Further no Advocate Commissioner shall be appointed to establish the possession. Hence, there is no merit in the revision and there is no illegality or infirmity and perversity in the order passed by the trial Court.

P.VELMURUGAN, J.
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6.It is the duty of the plaintiff to prove the title and date of encroachment and extent of encroachment through oral and documentary evidence and not through an Advocate Commissioner.

7.The Civil Revision Petition is dismissed. No costs.
Consequently connected miscellaneous petition is closed.

28.04.2018

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To
The District Munsif,
Sankarapuram.



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