

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2019

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THE HONOURABLE **Ms.JUSTICE P.T.ASHA**

CRP.(PD).No.1147 of 2019

and

CMP.No.7405 of 2019

C.Lakshmanan ..Petitioner/Plaintiff

Vs

R.Thiyagarajan ..Respondent/Defendant

This Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No. 400 of 2018 in O.S.No.7 of 2015 on the file of the learned District Munsif of Arni, Thiruvannamalai District and allow the said application by allowing the present revision petition.

For Petitioner : Mr.P.Satheesh Kumar

ORDER

The above Civil revision Petition is filed challenging the dismissal order passed in I.A.No. 400 of 2018 in O.S.No.7 of 2015 on the file of the learned District Munsif of Arni, Thiruvannamalai, which is a petition filed to reissue the warrant to the Advocate Commissioner to measure the property with the help of the Surveyor and to submit a report and plan.

2 The brief facts which are necessary for disposing of this Civil Revision Petition are as follows:

The revision petitioner/plaintiff has filed the suit for a bare injunction and the cause of action for filing the suit is the alleged attempts being made by the defendant to obliterate the ridge running on the North and East of the plaintiffs property, which has been described in the suit schedule. The injunction has been sought only on account of this threat. It is seen that earlier an Advocate Commissioner has been appointed to note down physical features and report has been filed. The Advocate Commissioner has also drawn a plan in which he has referred to the existence of the ridge.

3 Despite the above, the petitioner has come forward with the impugned application on the ground that when the Advocate Commissioner had visited the spot, he had noted the encroachment done by the respondent/defendant by changing the ridges. According to the revision petitioner/plaintiff it was done in February 2015 and the petition for reissue has been sought for only to find out about the actual extent of encroachment made by the respondent/defendant.

The said application has been rejected by the learned District Munsif, Arni, on the ground that there has been no amendment in the pleading to show that there has been an encroachment and the suit is not one for either declaration or recovery of possession. Challenging the said order, the revision petitioner/plaintiff is before this court.

4 Heard Mr.P.Satheesh Kumar, learned counsel appearing on behalf of the revision petitioner. It has been time and again held by this Court that an Advocate Commissioner cannot be used to gather evidence. The very application which has been moved by the revision petitioner is to appoint an Advocate Commissioner to measure the extent of the encroachment and the said exercise cannot be done by the Advocate Commissioner, since an Advocate Commissioner cannot step into the shoes of the parties to gather evidence. The suit is one for a bare injunction and the cause of action is that the defendant is attempting to obliterate the ridge and that is the basis for which, the suit has been filed. There is no pleading with reference to encroachment being made by the defendant.

P.T.ASHA, J.

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Under these circumstances, this Court find no infirmity in the order passed by the learned Judge.

5 In the result, the Civil Revision Petition stands dismissed and order passed in I.A.No. 400 of 2018 in O.S.No.7 of 2015 on the file of the learned District Munsif of Arni, Thiruvannamalai District is conformed. No costs. Consequently, connected miscellaneous petition is also closed.

27.03.2019

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Index: Yes/No

Internet: Yes/No

Speaking order / Non-speaking order

To

The District Munsif of Arni,
Thiruvannamalai District.

CRP.(PD).No.1147 of 2019
and
CMP.No.7045 of 2019