

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.06.2019**

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.R.P.(PD)No.3277 of 2014
and M.P.No.1 of 2014

Govindan

...Petitioner

vs.

1.Parvathu

2.Govindaraj

3.Krishnan

...Respondents

Prayer: Civil Revision Petition filed under Section 227 of the Constitution of India, to set aside the fair and decreetal Order dated 24.6.2014 in I.A.No.1191 of 2013 in O.S.No.229 of 2013 on the file of the learned District Munsif, Palacode.

For Petitioner : Mr.R.Selvakumar

ORDER

The instant Civil Revision Petition has been filed challenging the order dated 24.06.2014, passed by the learned District Munsif, Palacode, dismissing I.A.No.1191 of 2013 in O.S.No.229 of 2013 filed by the petitioner seeking for appointment of an Advocate Commissioner to note down the physical features of the suit schedule 'B' property.

Brief facts leading to the filing of the instant revision:

2.The petitioner is the plaintiff in the suit and the respondents are the defendants. The petitioner filed a suit O.S.No.229 of 2013, on the file of the learned District Munsif, Palacode, seeking for declaration and injunction in respect of the suit schedule 'B' property which is a common pathway. According to the petitioner, he is having a sale deed in his name and a joint patta is also available for the common pathway. During the pendency of the suit, the petitioner filed I.A.No.1191 of 2013 in O.S.No.229 of 2013, seeking for appointment of Advocate Commissioner to note down the physical features of the suit schedule 'B' property. A counter was also filed by the respondents/defendants in I.A.No.1191 of 2013.

3.The learned District Munsif, Palacode by its order dated 24.06.2014, dismissed I.A.No.1191 of 2013 filed by the petitioner on the ground that the correct measurement of the suit schedule 'B' property was not furnished by the petitioner in I.A.No.1191 of 2013.

4.Aggrieved by the dismissal of I.A.No.1191 of 2013, the petitioner has filed the instant Civil Revision Petition.

5.Heard Mr.R.Selvakumar, learned counsel for the petitioner.

6.The Civil Revision Petition is of the year 2014 and is still in the admission stage. Admittedly, the suit has been filed by the petitioner for declaration and injunction in respect of the suit schedule 'B' property which is a common pathway and which according to the petitioner, he is also entitled to use the same along with the respondents/defendants.

7.It is for the petitioner to establish before the trial Court through oral and documentary evidence that he is the joint patta holder of the suit schedule 'B' property along with the respondents/defendants. I.A.No.1191 of 2013 has been filed by the petitioner for appointment of Advocate Commissioner only to note down the physical features of the suit schedule 'B' property whereas the suit filed by the petitioner is a suit for declaration and injunction.

8.Therefore, in the considered view of this Court, no useful purpose will be served if an Advocate Commissioner is appointed to note down the physical features of the suit schedule 'B' property as it will not aid in the determination of the result of the suit. It will also not assist the petitioner to establish his right over the suit schedule 'B' property.

ABDUL QUDDHOSE, J.

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9.This being the case, the trial Court has rightly rejected the application I.A.No.1191 of 2013 filed by the petitioner, though the reasoning given by the trial Court may not be correct.

10.In the result, there is no merit in this Civil Revision Petition. Accordingly, the Civil Revision Petition is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

07.06.2019

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
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