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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13..12..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CIVIL REVISION PETITION NO.3812 OF 2019

AND

C.M.P.NO.25041 OF 2019

R.Manivannan

... Petitioner

-Versus-

M.Sundaram

... Respondent

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 26.07.2019 made in I.A.No.1 of 2019 in O.S.No.14 of 2011 by the learned District Munsif, Mettur, Salem District.

For Petitioner : Mr.P.Mani

ORDER

This civil revision petition is directed against the order of the learned District Munsif, Mettur, dismissing the application filed by the petitioner under Order XVI, Rule 1 and Section 151 of CPC for issuance of summons to the then Village Administrative Officer - Mr.S.Pandian for his examination in court as witness on the side of the plaintiff.

2. The petitioner filed a suit in O.S.No.14 of 2011 for a decree for declaration declaring his right to have access to the cart tract passing on the suit property and also for permanent injunction restraining the respondent from interfering with his peaceful usage of the cart tract. Earlier, the petitioner filed an application for appointment of Advocate Commissioner to measure the suit property with the help of a qualified surveyor and also to find out the existence of the cart tract. That application was allowed. Pursuant to the same, when the Advocate Commissioner visited the suit property along with the qualified surveyor he could not measure the suit property as the same was not sub divided and therefore, he returned the warrant of commission without any report. Thereafter, the petitioner filed the application which is the subject matter in the revision seeking to issue summons to the then Village Administrative Officer who had assisted the Advocate Commissioner while he inspected the suit property pursuant to the warrant of commission issued earlier for the purpose of examining him as



witness on his side. The court below had dismissed the application on the ground that the Advocate Commissioner did not even file any report and petitioner also did not press the application. The court below has held that when the Advocate Commissioner himself not filed any report, there would not be any necessity to examine the then Village Administrative Officer who stated to have assisted the Advocate Commissioner at the time of inspection of the suit property. Challenging the above said order, the petitioner/plaintiff is before this court.

3. I have heard the learned counsel for the petitioner and perused the records carefully.

4. The application which is the subject matter of the revision petition was filed seeking to summon the then Village Administrative Officer who had accompanied the Advocate Commissioner at the time of inspection of the suit property. Admittedly, the Advocate Commissioner could not execute the warrant of commission as the suit property was not sub divided by the revenue authorities and as such the petitioner himself did not press the application and the same was accordingly dismissed. When the Advocate Commissioner himself not filed any report, there would not be any purpose served, if summons is issued to the then Village Administrative Officer for his examination. The court below on considering the all these factual aspects has rightly dismissed the application by way of impugned order which does not require any interference at the hands of this court. Thus, the civil revision petition fails and the same is liable only to be dismissed.

In the result, this civil revision petition is dismissed. No costs. Consequently, connected CMP is closed.

Sd/-
Assistant Registrar(CO-MDU)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The District Munsif, Mettur, Salem District.

+1cc to Mr.P.Mani, Advocate, S.R.No.103890

Civil Revision Petition No.3812 of 2019

BP(CO)
CS/13/07/2020