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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.4592 of 2017
and
C.M.P.No.21633 of 2017

Pichaikarammal

..Petitioner/Petitioner/
Appellant

-Versus-

Mohan

..Respondent/Respondents/
Respondents

Chinnakulandhai (died)

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 01.11.2017 made in I.A.No.15 of 2017 in A.S.No.22 of 2010 by the learned Subordinate Judge, Gudiyattam, Vellore District.

For Petitioner

: Mr.M.Subash Pandiyan

ORDER

This Civil Revision Petition is directed against the order of the learned Subordinate Judge, Gudiyattam, dismissing the application filed by the petitioner herein for appointment of Advocate Commissioner to note down the physical features and to measure the disputed property with the help of a Taluk Surveyor and to file a report with rough plan.

2. Earlier the petitioner filed a suit in O.S.No.853 of 1996 on the file of the learned District Munsif, Gudiyattam, for declaration of title and permanent injunction and the same was dismissed 22.04.2010. Challenging the same, the plaintiff filed an appeal in A.S.No.22 of 2010 on the file of the learned Subordinate Judge, Gudiyattam. Though above said appeal suit was earlier dismissed for default of the petitioner, the same has been subsequently restored to the file. Pending appeal, the petitioner filed the application under revision for appointment of Advocate Commissioner for the purpose already stated supra.



The appellate court has dismissed the application holding that the application was filed only to drag on the proceedings and there was no bonafide in it. It is this order which is now under challenge in this revision petition.

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

4. The suit was filed by the petitioner in the year 1996 for declaration of title and permanent injunction which was dismissed on 22.04.2010. Aggrieved by the same, the petitioner filed an appeal in A.S.No.22 of 2010 on the file of the Subordinate Judge, Gudiyattam and the same has been pending for more than 7 years. When the appeal suit was taken up for final hearing, the petitioner came out with the application under revision for appointment of Advocate Commissioner.

5. The learned counsel for the petitioner submitted that there is a dispute with respect to the sub division of the property and also location of the well and therefore, which necessitated the petitioner to seek for appointment of Advocate Commissioner.

6. The dispute with regard to the sub division of the property was raised in the suit itself. Though the petitioner very well knew about the dispute raised by the respondent in the suit itself, he had not taken any steps all along for appointment of Advocate Commissioner and the suit reached its finality in the year 2010. In the appeal suit also, for more than 7 years, the petitioner did not take any steps for appointment of Advocate Commissioner. It could be seen from the available records that when the appeal was taken up for final hearing, the petitioner had filed the application for appointment of Advocate Commissioner. In a suit for declaration of title, it is for the plaintiff to establish his title through proper oral and documentary evidence and the plaintiff cannot seek to collect evidence by getting an Advocate Commissioner appointed. Even if any Advocate Commissioner is appointed and the report is filed, the same would no way help to the case of the petitioner.

7. On considering the legal and factual aspects of the matter, the learned Subordinate Judge has rightly dismissed the application by way of impugned order in which this court does not find any illegality or irregularity warranting interference. Thus, the revision petition fails and the same is liable only to be dismissed.



In the result, this Civil Revision Petition is dismissed and the order of the learned Subordinate Judge, Gudiyattam, impugned in this revision stands confirmed. No costs. Consequently, connected CMP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Subordinate Judge, Gudiyattam, Vellore District.

Civil Revision Petition
No.4592 of 2017

KJ (CO)
RMP (15/07/2020)