



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P. (PD) (MD) .No. 631 of 2019

and

C.M.P. (MD) .No.3231 of 2019

WEB COPY

T.Shanmugam ... Petitioner/Petitioner/Plaintiff
Vs.
1.T.Ramalingam
2.L.Thiayarajan ... Respondents/Respondents/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.757 of 2016 in O.S.No.246 of 2014, dated 10.04.2018 on the file of the District Munsif Court, Pattukottai.

For Petitioner : Mr.G.Karnan

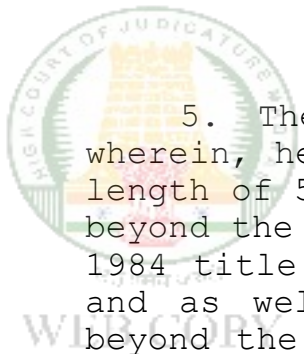
O R D E R

The Civil Revision Petition has been filed against the order of dismissal in I.A.No.757 of 2016 in O.S.No.246 of 2014 on the file of the District Munsif Court, Pattukottai, dated 10.04.2018.

2. It is the contention of the revision petitioner that the above said I.A.No.757 of 2016 was filed for the purpose of appointment of Advocate Commissioner to measure the suit property. Further, he contended that the second defendant filed a written statement and in paragraph No.16, he has stated that the plaintiff failed to mention the measurement of the compound wall, however, the averments made in the plaint that South to North 5 feet, is not correct. Therefore, to disprove the said contention, he preferred the present application in I.A.No.757 of 2016 in O.S.No.246 of 2014 for appointment of Advocate Commissioner to measure the suit property and file a report before the Court below. Further, he contended that according to him, he is entitled to compound wall South to North 5 feet and apart from the 5 feet, he is also entitled for 5 feet. But the Court below has dismissed the application stating that it is not necessary for appointment of Advocate Commissioner. Challenging the same, the present civil revision petition has been filed.

3. When the matter came up for hearing on 29.03.2019, notice was ordered to the respondents and though notice served on both the respondents, none appeared for them.

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



5. The present suit was filed by the revision petitioner, wherein, he claimed that he is entitled to the compound wall at the length of 5 feet and apart from that, he is also entitled for 5 feet beyond the compound wall. Further, he has submitted that in the year 1984 title deeds, the extent of the compound wall is 5 feet length and as well as the the entitlement of the plaintiff for 5 feet beyond the compound wall also mentioned. When that being the case, it is for the plaintiff to prove his case, by let in oral as well as the documentary evidence. Without doing so, the plaintiff / revision petitioner herein has preferred an I.A.No.757 of 2016, based on the averments of the second defendant in the written statement, which is not permissible and it is only to prolong the legal proceedings unnecessarily, When the burden lies on the revision petitioner, he has to prove his case before the Court by way of let in oral as well as documentary evidence. Therefore, this Court is of the view that the Court below has rightly rejected the application for appointment of an Advocate Commissioner and there is no need to interfere with the order passed by the Court below in I.A.No.757 of 2016, dated 10.04.2018. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

The District Munsif,
Pattukottai.

COPY TO
The Section Officer,
V.R.Section, Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1CC TO MR.G.KARNAN, Advocate Sr. No. 91427

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