

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3054 of 2017
and C.M.P.No.14343 of 2017

Senthil Meena

.. Petitioner/Plaintiff

Vs.

V.Subramaniyan (died)

1.S.Ramadoss

2.S.Velmurugan

3.S.Kumar

4.S.Suresh

.. Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 21.07.2017 made in I.A.No.335 of 2017 in O.S.No.289 of 2014 on the file of the Principal District Munsif Court, Cuddalore.

For Petitioner : Mr.K.A.Ravindran

For Respondents : No appearance

ORDER

The matter is heard through “Video-Conferencing”.

The Civil Revision Petition is filed against the fair and decretal order dated 21.07.2017 made in I.A.No.335 of 2017 in O.S.No.289 of 2014 on the file of the Principal District Munsif Court, Cuddalore.

2.The petitioner is the plaintiff and respondents are the defendants in O.S.No.289 of 2014 on the file of the Principal District Munsif Court, Cuddalore. The petitioner filed the said suit for declaration and injunction. Pending suit, the petitioner filed I.A.No.335 of 2017 for appointment of Advocate Commissioner to inspect and survey the suit property with the help of surveyor and submit a report. The respondents did not file counter. The learned Judge dismissed the said petition.

3.Against the said order of dismissal dated 21.07.2017 made in I.A.No.335 of 2017 in O.S.No.289 of 2014, the petitioner has come out with the present Civil Revision Petition.

4. The learned counsel appearing for the petitioner submitted that even though the Tahsildar in his communication dated 19.02.2014 informed that the boundaries are fixed by the surveyor, the respondents failed to restrict their movement within their boundary. Hence, the appointment of Advocate Commissioner is necessary to measure the property to get a decree for injunction. When the respondents have not objected to appointment of Advocate Commissioner by filing the counter, the learned Judge ought to have allowed petition. The respondents are interfering with the possession of the property by the petitioner beyond their boundary and therefore, appointment of Advocate Commissioner is necessary. The respondents are making false claim of ownership and are obstructing the petitioner from using the second item of the property and preventing the petitioner to reach the first item of the property. In view of the same, he prayed for appointment of Advocate Commissioner and allowing the Civil Revision Petition.

5.Though notice has been served on the respondents 1 to 4 and their names are printed in the cause list, there is no representation on behalf of them either in person or through counsel.

6.Heard the learned counsel appearing for the petitioner and perused the entire materials available on record.

7.The grievance of the petitioner is that when the respondents have not filed any objection, the learned Judge ought to have allowed the petition for appointment of Advocate Commissioner so that the petitioner would get a decree of injunction. From the materials on record, it is seen that the petitioner filed suit for declaration and injunction. According to the petitioner, the respondents without any right over the suit property are obstructing the petitioner and are interfering with her peaceful possession. The petitioner has taken steps to measure the suit property and on her petition, on the instruction of Tahsildar, the suit property was measured and boundary stones were fixed. Even after fixing the

boundary stones, the respondents are obstructing the petitioner from using the property. The petitioner herself has admitted in the affidavit that on the representation sent by her to the District Collector, the Tahsildar informed her that the suit property was measured and boundaries are fixed. In such case, there is no necessity to appoint Advocate Commissioner to measure the suit property with the help of surveyor once again and file his report. The learned Judge considering the above fact in proper perspective and dismissed the petition by giving valid reason. There is no illegality or irregularity in the order passed by the learned Judge warranting interference by this Court.

8.In the result, the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Index : Yes/No
kj

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V.M.VELUMANI, J.

kj

To
The Principal District Munsif
Cuddalore.



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