



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 05.10.2020

CORAM :

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

C.R.P (MD) (NPD) No.1976 of 2015
and M.P (MD) No.1 of 2015

Fathimuthu Beevi

...Revision Petitioner/Respondent
/Respondent

Vs.

Arumugathammal (died)
P.Shanmugasundaram

... Respondent/Respondent/
Appellant

PRAYER: The Civil Revision Petition is filed under Article 227 of Constitution of India against the Fair and Decreetal order dated 03.03.2015 passed in I.A.No.91 of 2011 in A.S.No.2 of 2011 on the file of the Additional Subordinate Judge, Tirunelveli.

For Petitioner : Mr.K.Gokul
For Respondent : Mr.K.Chengizkhan
for Mr.G.Prabhu Rajadurai

ORDER

This revision petition is filed by one Fathimuthu Beevi, who is the defendant in O.S.No.72 of 1997 on the file of District Munsif, Tirunelveli. The said suit was decreed by the trial Court. Challenging the same, the third party preferred an appeal in A.S.No.2 of 2011. The third party stated that the suit property has to be identified and hence, sought appointment of Commission in I.A.No.91 of 2011.

2. After considering the rival submissions, the learned first appellate Judge has considered the need for appointing the Commission. In an elaborate order, the trial Court has appointed a Commissioner for local inspection. Challenging the same, the respondent in the appeal has filed this revision.

3. The objection of the revision petitioner is that there was an earlier suit in O.S.No.155 of 2005 and the properties in O.S.No.72 of 1997 and O.S.155 of 2005 are one and the same and the present Interlocutory Application was filed for making confusion. According to the revision petitioner, the lower court allowed the application on the basis of presumption and assumption.



4. The learned counsel for the respondent submitted that the order of the court below in allowing the application is in order.

5. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent.

6. In its order, the learned first appellate court has noted certain apparent discrepancy between the boundary description of the property covered under plaintiff's title in Ex.A1 and the suit property. It has to be stated that every Civil Court has certain discretion in the matter of obtaining best evidence which it may require for disposing the case and not every such exercise of discretion deserves to be interfered by this Court exercising its power under Article 227 of the Constitution of India.

6. It should be demonstrated before this Court how the substantial right of the revision petitioner is prejudiced by such order. The revision petitioner is not able to demonstrate how and why the order of the first appellate court in appointing a Commission is perverse or prejudicial to his right. This Court does not find any merit in this revision and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

cm/msa

To,

1. The Additional Subordinate Judge
Tirunelveli

2. The V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2C)

C.R.P (MD) (NPD) No.1976 of 2015
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(CO)

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