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Court : Chennai

Decided On : Oct-16-2015

Judge : D. Hariparanthaman

Appeal No. : C.R.P. No. 3143 of 2015 & M.P. No. 1 of 2015

Appellant : Pappayee

Respondent : R. Sundharam and Others

Judgement :

(Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decreetal order dated 20.03.2015 made in I.A.No.40 of 2014 in O.S.No.549 of 2010 on the file of the Principal District Munsif, Salem.)

1. The revision petitioner is the 1st defendant in O.S.No.549 of 2010 on the file of the Principal District Munsif, Salem. The 1st respondent herein is the plaintiff therein. The said suit was filed seeking for permanent injunction in respect of the properties mentioned in schedule A and B.

2. The 1st defendant/revision petitioner filed a written statement stating that there is a three feet pathway on the Eastern boundary of the 'A' schedule property and the same is deliberately not shown by the plaintiff with an intention to encroach upon the pathway. According to the revision petitioner, the three feet pathway also forms part of the front yard of the house of the revision petitioner. Hence, the revision petitioner along with other defendants filed an application in I.A.No.40 of

2014 in O.S.No.549 of 2010 seeking for appointment of an Advocate Commissioner to note down the physical features of the properties and file a report along with the help of a qualified surveyor.

3. Though it has been specifically pleaded in paragraphs 3 and 4 of the affidavit filed in support of the application in I.A.No.40 of 2014 that a 3 feet wide pathway leading to the house of the revision petitioner is in the eastern boundary of the 'A' schedule property and the same is not shown deliberately and hence, an Advocate Commissioner has to be appointed to note down the extent of the pathway, the prayer made in the petition was very vague and nowhere refers to note down about the 3 feet pathway.

4. In these circumstances, the Trial Court dismissed the application in I.A.No.40 of 2014 in O.S.No.549 of 2010 and aggrieved against the same, the present Civil Revision Petition has been preferred.

5. The learned counsel for the revision petitioner vehemently contended that the very purpose of filing the application in I.A.No.40 of 2014 in O.S.No.549 of 2010 was to note down the three feet pathway that forms part of the front yard of the house of the revision petitioner, which has been mentioned in the written statement as well as the affidavit filed in support of I.A.No.40 of 2014.

6. However, this Court pointed out that though such pleading was made in the written statement as well as the affidavit filed in support of I.A.No.40 of 2014, the prayer in the I.A was very vague and therefore, the order of the Trial Court does not refer about the request of the revision petitioner for appointment of an Advocate Commissioner to note down the physical features of the properties and file a report along with the help of a qualified surveyor, about the 3 feet pathway.

7. In these circumstances, the learned counsel for the revision petitioner would fairly submit that this Court may permit the revision petitioner to withdraw the application in I.A.No.40 of 2014 with liberty to file a fresh application and further, issue a direction to the Trial Court to consider the same in the light of the pleadings made therein, on merits and in accordance with law. The learned counsel for the revision petitioner had also made an endorsement to that effect.

8. Considering the aforesaid facts and circumstances, this Court is inclined to permit the revision petitioner to withdraw the application in I.A.No.40 of 2014, with liberty to file a fresh application and on filing of such application, the Trial Court is directed to consider the same, without being influenced by the order dated 20.03.2015 made in I.A.No.40 of 2014 in O.S.No.549 of 2010 and the same shall be disposed of only on merits and in accordance with law.

9. The Civil Revision Petition is disposed of with the above directions. Consequently, connected miscellaneous petition is closed. No costs.

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