

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2015

CORAM

THE HONOURABLE MR. JUSTICE **K.K.SASIDHARAN**

C.R.P. (PD) No.197 of 2014

and

M.P.Nos.1 of 2014 and 1 of 2015

1.V.Balasubramaniyan rep. by its

Power Agent Rajkumar

2.V.Gunavathi

.. Petitioners

Vs.

1.D.Vijayan

2.V.Baskar

3.A.Anjali Devi

4.R.Bakiyavathi

5.Shrine Basilica rep. by

its Rector Fr. Xavier

.. Respondents

Civil Revision Petition filed under Article 227 of The Constitution of India against the fair and decretal order passed in I.A.No.367 of 2013 in O.S.No.483 of 2005 dated 27.11.2013 passed by the District Munsif, Nagapattinam.

For Petitioners .. Mr.P.Vijendran

For Respondents .. Mr.M.S.Palanisamy for R5

ORDER

This Civil Revision Petition is directed against the order dated 27th November, 2013 in I.A.No.367 of 2013 in O.S.No.483 of 2005, whereby and whereunder, the application filed by the petitioners for appointment of Advocate Commissioner in a pending suit for partition was dismissed by the Trial Court.

2.Heard the learned counsel for the petitioners and the learned counsel for the fifth respondent.

3.The suit in O.S.No.483 of 2005 was filed for partition. The fifth respondent was impleaded as a subsequent purchaser.

4.During the currency of the suit, the petitioners filed an application for appointment of Advocate Commissioner to inspect the property and note down its physical features. According to the petitioners, the fifth respondent started constructing a church building in the said property, notwithstanding the pendency of suit.

5.The application was opposed by the fifth respondent. According

to the fifth respondent, they have not put up any new construction as alleged by the petitioners.

6.The learned Trial Judge considered the issue in the light of the counter filed by the fifth respondent and dismissed the application. Feeling aggrieved, the unsuccessful petitioners are before this Court.

7.The suit in question is one for partition. The Court has to ascertain the share of the parties and pass a preliminary decree. There is no question of issuing a commission even before passing a preliminary decree. It is always open to the petitioners to approach the Trial Court for appointment of Advocate Commissioner to divide the property by metes and bounds after passing preliminary decree.

8.The fifth respondent has already constructed a church building. Learned counsel for the fifth respondent, on instructions, submitted that the fifth respondent would not put up any new building till the disposal of the suit. The said submission is recorded.

9.The application submitted by the petitioners for appointment of Advocate Commissioner was rightly rejected by the learned Trial Judge. I do not find any error or illegality in the said order, warranting interference by this Court, by exercising the revisional jurisdiction

under Article 227 of The Constitution of India.

10.The learned District Munsif, Nagapattinam is directed to dispose of the suit in O.S.No.483 of 2005 on merits, as expeditiously as possible and in any case, on or before 31 March, 2016.

11.The Civil Revision Petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

28.08.2015

Index:Yes/No
mmi

To

The District Munsif,
Nagapattinam.

K.K.SASIDHARAN, J.

C.R.P.(P.D.) No.197 of 2014

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