

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

CRP (PD) No.1521 of 2015
and M.P.No.1 of 2015

1. Dhanabakkiyam
2. Hemalatha
3. Yamunadevi
4.Saranya

.. Petitioners

versus

1. Palaniyammal
2.Deivathal
3. Saraswathi
4. Kamalam
5. Sadasivam
6. Chandrasekar

..Respondents

Petition filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.565 of 2013 in O.S.No.106 of 2013 dated 13.02.2015 on the file of the District Munsif Court, Palladam.

For Petitioners : Mr.K.Suresh

O R D E R

Challenging the fair and decreetal order passed in I.A.No.565 of 2013 in O.S.No.106 of 2013 on the file of the District Munsif Court, Palladam, the defendants have filed the above Civil Revision Petition.

2.The plaintiffs have filed the suit in O.S.No.106 of 2013 for declaration and injunction. In the said suit, the plaintiffs filed an application in I.A.No.565 of 2013 under Order 26 Rule 9 of the Code of Civil Procedure, seeking for appointment of an Advocate Commissioner to note down the physical features and to measure the suit property along with the assistance of a Taluk Surveyor.

3. In the affidavit filed in support of the application, the plaintiffs have stated that the defendants were making hectic attempt to damage the poli in order to damage the boundary line of the suit property. Further, the plaintiffs have stated that the defendants are attempting to encroach a portion of the suit property and to alter the physical features of the same.

4. The defendants filed their written statement in the suit and also filed a memo adopting the averments stated in the written statement as a counter in the present application.

5. In the written statement, the defendants disputed the case of the plaintiffs and also disputed the identity of the suit property.

6. The trial Court, after taking into consideration the case of both parties, found that the appointment of an Advocate Commissioner is necessary for proper adjudication of the matter. In these circumstances, the trial Court allowed the application.

7. The learned counsel for the petitioners submitted that under the guise of noting down the physical features, the plaintiffs are trying to get a finding with regard to the possession of the property through the Advocate Commissioner.

8. It is settled position that an Advocate Commissioner cannot give a finding with regard to the possession of the property. That apart, it is also settled position that the parties cannot collect evidence through the Advocate Commissioner.

9. The learned counsel for the petitioners in support of his contention relied upon a Judgment reported in **2006-2-LW-159 (Chandrasekaran & 6 others vs. V.Doss Naidu)**, wherein, this Court has held that the Advocate Commissioner cannot give a finding with regard to possession. Further, in the Judgment relied upon by the learned counsel for the petitioners reported in **2011 SCC Online Mad 2355 (Ramanathan vs.Ayyavoo and others)**, this Court has held that a party cannot collect evidence through the Advocate Commissioner.

10. The ratios laid down in the above referred Judgments are settled positions and for the said purposes the Advocate Commissioner cannot be appointed. But, in the case on hand, the defendants are disputing the very identity of the property. That apart, the plaintiffs have averred that the defendants are trying to damage the poli and are attempting to encroach into the suit property and alter the physical features. In these circumstances, the appointment of an Advocate Commissioner is necessary for proper adjuration of the dispute between the parties. The trial Court is directed to appoint an Advocate Commissioner to note down the physical features of the suit property. In these circumstances, I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and hence the same is dismissed. No costs. Connected miscellaneous petition is also dismissed.

10.04.2015

rg
To
The District Munsif Court, Palladam.

M.DURAI SWAMY,J

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