

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2015

CORAM

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

C.R.P.(PD) No.2145 of 2015 &

M.P.No.1 of 2015

1.Ramasamy
2.Ramathal
3.Balakrishnan
4.Bhaskarkumar
5.S.Vijayakumari
6.Minor S.v.Dharsan
Rep. By her mother/next friend
Guardian S.Vijayakumari

... Petitioners

v.

1.Saravanan
2.Thangavel

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 26.03.2015 made in I.A.No.136 of 2015 in O.S.No.111 of 2011 on the file of Subordinate Court, Perundurai.

For Petitioners : Mr.N.Manoharan

For Respondents : Mr.M.V.Venkataseshn

O R D E R

Challenging the fair and final order passed in I.A.No.136 of 2015 in O.S.No.111 of 2011 on the file of Subordinate Court, Perundurai, the plaintiffs 1 to 3 and 5 to 7 have filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.111 of 2011 for declaration and permanent injunction in respect of an extent of 2.81 acres out of the total extent of 5.81 acres. The defendants filed their written statement and are contesting the suit.

3. Earlier, the defendants filed an application seeking for appointment of an Advocate Commissioner, which application was withdrawn by the 6th defendant. Thereafter, the defendants 13 and 14 were impleaded in the suit and they filed an application in I.A.No.136 of 2015 seeking for appointment of an Advocate Commissioner to divide the total extent into two equal half and find east west boundary with the aid of documents dated 23.1.1939 and 11.3.1953. The application filed by the defendants 13 and 14 was opposed by the plaintiffs stating that there is no necessity for appointment of the Advocate Commissioner for the purpose mentioned in the application.

4. The Trial Court, taking into consideration the case of the defendants 13 and 14, allowed the application and appointed an Advocate Commissioner.

5. It is settled position that the parties cannot collect evidence through Advocate Commissioner. It is also settled position that the burden of proof lies on the plaintiffs to establish their case by oral and documentary evidences.

6. When the plaintiffs themselves have not filed any application seeking for appointment of the Advocate Commissioner, there is no necessity for the defendants 13 and 14 seeking for appointment of the Advocate Commissioner, that too, after the commencement of the trial. The parties have to establish their case by oral and documentary evidences and not through Advocate Commissioner. The Trial Court, without taking into consideration this position, allowed the application and appointed the Advocate Commissioner, which is liable to be set aside.

7. Accordingly, the fair and final order passed in I.A.No.136 of 2015 in O.S.No.111 of 2011 are set aside and the application in I.A.No.136 of 2015 stands dismissed. The Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Index : No
Internet : Yes

21.07.2015

Rj

To
The Subordinate Court,
Perundurai.

M. DURAISWAMY,J.,

Rj

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