

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.06.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD) No.2358 of 2015 &

M.P.No.1 of 2015

1.Chinnakannu
2.Amirtham

... Petitioners

v.

1.Chinnasamy
2.Chellakannu
3.Vasanthi
4.C.Ashokkumar
5.P.Sivaprakasam

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 05.03.2015 passed in I.A.No.9 of 2013 in O.S.No.67 of 2013 on the file of learned Additional Subordinate Judge, Krishnagiri.

For Petitioner : Mr.N.Nicholas

O R D E R

Challenging the fair and final order passed in I.A.No.9 of 2013 in O.S.No.67 of 2013 on the file of Additional Subordinate Court, Krishnagiri, the plaintiffs have filed the above Civil Revision Petition.

2. The plaintiffs filed the suit in O.S.No. 67 of 2013 for partition and for other reliefs. The defendants filed their written statement and are contesting the suit.

3. In the said suit, the plaintiffs took out an application in I.A.No.9 of 2013 seeking for appointment of an Advocate Commissioner to visit the suit property and file a report to enumerate the number of trees standing in the suit land. The defendants filed their counter and contested the application.

4. The Trial Court, after taking into consideration the case of both the parties, dismissed the application finding that there is no necessity for appointment of the Advocate Commissioner to file a report with regard to the number of standing trees in the suit land.

5. On a perusal of the plaint schedule, it is clear that the plaintiffs have not stated anything about the standing trees in the schedule of properties. Only in the body of the plaint, the plaintiffs have stated that

there are 40 tamarind trees and 250 mango trees in the land. In the absence of any mention in the schedule of property with regard to the standing trees, the present application filed by the plaintiffs seeking for appointment of Advocate Commissioner to file a report to find out the number of trees standing in the suit land is unnecessary.

6. The learned counsel appearing for the revision petitioners relied upon a judgment reported in **2015(3) LW 121 (Thangammal v. K.Kumarasamy and another)** wherein, this court held that in the case of standing trees available in the suit land it will be difficult to assess the damage caused to the trees if a Commissioner is not appointed and therefore, this court appointed an Advocate Commissioner to find out the damage caused to the trees.

7. On a perusal of the judgment reported in **2015(3) LW 121 (cited supra)**, it is clear that in the said judgment the plaintiffs sought for the relief of recovery of possession of the plaint schedule property from the 1st defendant with all trees, fixtures, factory, roads and water courses etc., with good condition. Since there was a prayer with regard to the standing trees also in the said suit, this court held that the appointment of Advocate Commissioner is necessary.

8. In the case on hand, when the plaintiffs have not mentioned about the standing trees in the suit schedule, there is no necessity for appointment of Advocate Commissioner to file a report with regard to the standing trees. Taking note of all these aspects, the Trial Court has rightly dismissed the application.

9. 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 is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

24.06.2015

Index : No
Internet : Yes

Rj

To

The Additional Subordinate Judge,
Krishnagiri.

M. DURAISWAMY,J.,

Rj

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