

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2015

CORAM

THE HONOURABLE MS.JUSTICE R.MALA

CRP (PD).Nos.4310 and 4311 of 2015
and M.P.No.1 of 2015

1.Imtiaz
2.Noor Mohammed
3.Shaji

.. Petitioners
in both CRPs.

Vs

1.Asif Basha
2.Harif Basha
3.Riyaz Basha
4.T.S.Nawabjohn

.. Respondents
in both CRPs.

Prayer:C.R.P.(PD)No.4310 of 2015 is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 17.08.2015 in I.A.No.1376 of 2015 in O.S.No.215 of 2012 on the file of the Principal District Munsif Court, Tirupattur.

Prayer:C.R.P.(PD)No.4311 of 2015 is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 17.08.2015 in I.A.No.1377 of 2015 in O.S.No.215 of 2012 on the file of the Principal District Munsif Court, Tirupattur.

For Petitioner : Mr.PA.Sudesh Kumar

COMMON ORDER

C.R.P.(PD)No.4310 of 2015 has been filed against the fair and decreetal order dated 17.08.2015 in I.A.No.1376 of 2015 in O.S.No.215 of 2012 on the file of the Principal District Munsif Court, Tirupattur.

2.C.R.P.(PD)No.4311 of 2015 has been filed against the fair and decreetal order dated 17.08.2015 in I.A.No.1377 of 2015 in O.S.No.215 of 2012 on the file of the Principal District Munsif Court, Tirupattur.

3.At the time of admission, argument of the learned counsel for the petitioner is heard in length.

4.The petitioners as plaintiffs filed a suit for declaration of title and also injunction. The respondents/defendants filed the written statement and contested the suit. During the pendency of the suit, the petitioners/plaintiffs filed an application in I.A.No.1376 of 2015 to re-open the plaintiffs case. The petitioners/plaintiffs has also preferred an application in I.A.No.1377 of 2015 for appointment of Advocate Commissioner. The trial Court, after hearing both sides, dismissed the applications. Aggrieved over the same, the revision petitioners has preferred C.R.P.(PD)No.4310 of 2015 challenging the impugned

order passed in I.A.No.1376 of 2015 and preferred C.R.P.(PD)No.4311 of 2015 challenging the impugned order passed in I.A.No.1377 of 2015.

4.Learned counsel for the petitioners submitted that one K.J.Ameer Sahib, who is the husband of the first petitioner/first plaintiff and father of petitioners 2 and 3/plaintiffs 2 and 3 has purchased the suit property measuring 1.63 acres in Title Deed Bit No.1090 within the stated boundaries in New S.No.246 and also purchased 25 cents in the same property in New S.No.246-4 under a registered sale deed dated 25.10.1965. The said K.J.Ameer Sahib died intestate on 16.04.1986 leaving behind the plaintiffs/petitioners as legal heirs. The father of defendants 1 to 3 and brother of the 4th defendant, namely, Kamal Basha appeared to have purchased the suit property in the Court auction in E.P.No.577 of 1981 in O.S.No.422 of 1964 and the defendants/respondents attempted to interfere with the possession and deny the title of the petitioners/plaintiffs. Hence, they were constrained to file a suit for declaration of title and injunction. The third defendant filed the written statement stating that the property was purchased in the Court auction and the defendants were in possession and enjoyment of the suit. During the trial, the defendants/respondents filed the Sale Certificate, wherein the Title Deed Bit Number has been mentioned as 1030 and so, it is entirely different property. Therefore, to find out whether the suit property is the property purchased by

the defendants, appointment of Advocate Commissioner is necessary. Hence, he filed the applications to re-open the plaintiffs case and to appoint an Advocate Commissioner. That factum was not considered by the Trial Court. Hence, he prayed for an order.

5.Considered the submissions made by the learned counsel for the petitioners and perused the typed set of papers.

6.The plaintiffs filed the suit only on the basis of the sale deed dated 25.10.1965 alleged to have purchased by the said K.J.Ameer Sahib in respect of Title Deed Bit No.1090 in New S.No.246 and 246-4. The respondents herein appeared to have purchased the property in the Court Auction. During the trial, sale certificate has been filed by the respondents/defendants wherein Title Deed Bit Number has been mentioned as 1030. So, it is the duty of the plaintiffs to prove their title by way of marking documents and also revenue records. But here the plaintiffs/petitioners filed sale deed to identify the property. Since there is vast difference between the Title Deed Bit Number 1030 and 1090, there is no dispute in respect of title to the property and hence, the appointment of Advocate Commissioner is not necessary. Further, the Trial Court has considered all the documents filed before the Trial Court and came to the conclusion that the husband of the first plaintiff and the father of the

plaintiffs 2 and 3 has already filed Section 47 application in E.P.No.577 of 19+81 in O.s.No.422 of 1964 and the same was dismissed. Thereafter the plaintiffs/petitioners had also filed another suit in O.S.No.77 of 1981, which was also dismissed. Therefore, without going into the merits of the case I am of the view that appointment of Advocate commissioner is not necessary to resolve the dispute between both the parties and the Trial Court has rightly dismissed the applications. Hence, I do not find any reason to interfere with the order passed by the Trial Court in I.A.Nos.1376 and 1377 of 2015 and the same are hereby confirmed.

7.In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

26.11.2015

Index: Yes/No
Internet:Yes/No
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To

The Principal District Munsif Court, Tirupattur.

R.MALA.J,

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