

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.12.2015

CORAM

THE HONOURABLE Ms. JUSTICE R.MALA

C.R.P.(PD).No.4556 of 2015

and

M.P.No.1 of 2015

1.A.Govindharajan
2.B.Valarmathi
3.G.Kathiravan
4.G.Senthil
5.S.Vetri selvi
6.S.Themozhi

..Petitioners

/vs/

1.Bagyavathi
2.Jayalakshmi
3.Ashok Kumar
4.Anbazhagan
5.Meena Kumari
6.Selvam
7.B.Rani
8.B.Gunasekaran
9.B.Manokaran
10.D.Gajalakshmi
11.D.Radhika
12.B.Siva Prakasam
13.B.Udhayakumar
14.B.Sezhiyan @ Baskar
15.M.Yesupadham
16.Gokul Kumar
17.T.P.Elangovan
18.T.A.Lalitha

..Respondents

PRAYER :Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 23.07.2015 made in I.A.No.994 of 2013 in O.S.No.497 of 2005 on the file of the District Munsif Court, Tiruvallur.

For Petitioner : Mr.K.A.Vimal Kumar

ORDER

This Civil Revision Petition has been filed against the order dated 23.07.2015 made in I.A.No.994 of 2013 in O.S.No.497 of 2005 on the file of the District Munsif Court, Tiruvallur.

2.The respondents/plaintiffs filed a suit in O.S.No.497 of 2005 for partition and separate possession of 4/7 share in the property. The first defendant filed the written statement and contested the suit. During the pendency of the suit, the defendants filed an application in I.A.No.994 of 2013 for appointment of Advocate Commissioner. The Trial Court after hearing both sides has dismissed the application. Against which, the present Civil Revision Petition has been filed.

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

4. Learned counsel for the petitioners submitted that on the basis of the oral partition, the plaintiffs had converted agricultural lands into housing plots and named as Raghavendra Nagar and obtained sanction from the Directorate of Town and Country Planning and to prove the same, appointment of Advocate Commissioner is necessary. 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. One Devaraja Mudaly, who is the brother of the first defendant/first petitioner filed a suit against the first petitioner and others for partition and separate possession of 4/7 share in the suit properties. The defendants filed the written statement and contested the suit stating that there were properties possessed by his mother Sornammal and she settled 3 acres and 14 cents in favour of the first defendant and the said Devaraj each 1 acre and 57 cents. The property allotted to the said Devaraj was converted into housing

plot and got approval in No.611/90. He further submitted that the said Devaraj has including 0.30 cents which was allotted to him and Sundaramurthy and prayed for dismissal of the suit. During the pendency of the suit, the defendants filed an application for appointment of Advocate Commissioner to measure the suit property and to note down the physical features and construction in the suit property.

7.It is well settled dictum of the Apex Court that no Commissioner can be appointed to collect material evidence because the petitioners themselves have stated that the mother executed a settlement deed and so, they can very well file the documents before the Court. Furthermore, the approval plan is a public document and the petitioners can obtain the document and prove the same. Without doing so, the petitioners have filed an application to drag on the proceedings. Hence, I do not find any reason to interfere with the finding of the Trial Court. Consequently, the Civil Revision Petition deserves to be dismissed.

8.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

9.At this juncture, the learned counsel for the petitioners sought for early disposal of the suit in O.S.No.497 of 2005. Considering the request made by the learned counsel for the petitioners, the Trial Court is directed to dispose of the suit in O.S.No.497 of 2005 within six months from the date of receipt of a copy of this order.

11.12.2015

Index: Yes/No
Internet:Yes/No
cse

To

The District Munsif Court, Tiruvallur.

R.MALA, J.

cse

**C.R.P(PD)No.4556 of 2015
and
M.P.No.1 of 2015**

11.12.2015