



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 08.01.2015

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P(MD)No.1971 of 2014

and

M.P(MD)No.1 of 2014

1.Periammal
2.Chelladurai
3.Jegadessan

.. Petitioners/Petitioners/Plaintiffs

Vs.

Natarajan

.. Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to call for the records relating to the order passed in I.A.No.517 of 2013 in O.S.No.85 of 2013, dated 04.04.2014 on the file of the District Munsif Court, Thuraiyoor and set aside the same.

For Petitioners : Mr.Veera Kathiravan

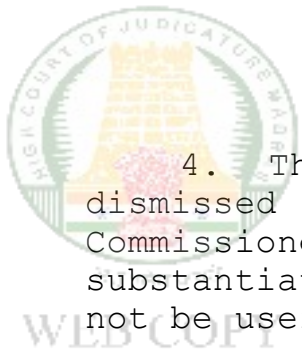
For Respondent : Mr.D.Selvanayagam

ORDER

The Civil Revision Petition is directed against the order in dismissing the petition in I.A.No.517 of 2013 to appoint an Advocate Commissioner to note down the physical features of the suit properties.

2. Heard the learned counsel appearing for the revision petitioners and the learned counsel appearing for the respondent.

3. The revision petitioners as plaintiffs have taken up the plaint in O.S.No.85 of 2013 on the file of the District Munsif, Thuraiyoor, who have sought for the relief of permanent injunction restraining the first defendant from putting up construction or demolishing the existing building and not to disturb the peaceful enjoyment of the suit properties. Besides to declare that the partition deed, dated 24.04.1998 is unenforceable.



4. The learned District Munsif, Thuraiyoor has rightly dismissed the application holding that by appointing the Advocate Commissioner, the plaintiffs are trying to gather evidence to substantiate their case and the report of the Commissioner will not be useful to declare that the partition deed is unenforceable.

5. It is settled principle that for the relief of permanent injunction, the factum of possession has to be gone into.

6. The Commissioner cannot be appointed to find out the factum of possession and the same has to be proved by the oral and documentary evidences and the plaintiffs cannot seek for appointment of an Advocate Commissioner to gather evidence. Being the suit for permanent injunction, the Commissioner cannot be appointed to find out who is in possession of the suit properties. The order of the learned District Munsif, Thuraiyoor in dismissing the application does not suffer from any material irregularity and the same is confirmed.

7. In fine, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

The District Munsif Court,
Thuraiyoor.

+One cc to M/s.D.Selvanayagam, Advocate, SR.No.858

+One cc to M/s.Veerakathiravan, Advocate, SR.No.826

ps

RL/4 c- 5/2/2015

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