



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2015

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P. (PD) (MD) No.541 of 2015

and

M.P. (MD) No.1 of 2015

1.Jeyakumar

2.Lakshmi

: Petitioners

Vs.

1. Saradha

2. The Tahsildar,
Office at Thasildar, Musiri,
Musiri Taluk,
Trichy District.

3. The Revenue Divisional Officer,
Office at Revenue Divisional Officer,
Musiri, Musiri Taluk,
Trichy District.

4. The District Collector,
Office at Trichy District Collectorate,
Rep. the Government of Tamil Nadu,
Trichy District.

: Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 09.12.2014 in I.A.No.790 of 2014 in O.S.No.204 of 2001 on the file of the District Munsif Court, Musiri.

For Petitioners : Mr.K.Govindarajan

ORDER

This revision is directed against the order refusing to appoint a Commissioner along with the Surveyor to measure the suit property and submit a report.

2. The suit is one for bare injunction restraining the defendants from interfering with the peaceful possession of the suit property. Admittedly, a Commissioner was appointed earlier in the suit in O.S.No.159 of 2009, at the instance of the plaintiff



and a report by the Commissioner has also been filed. Now, the defendants in the said suit have filed an Interlocutory Application in I.A.No.790 of 2014 in O.S.No.204 of 2001 for the very same relief. According to the revision petitioners, both the suits were directed to be tried in common. Though they filed an objection to the report of the earlier Commissioner, according to them, that may be taken advantage of the plaintiff in O.S.No.159 of 2009.

3. Since the suit is being one for injunction, there is no necessity for appointment of a Commissioner once again, as there is a Commissioner appointed earlier, who has already submitted a report. The report of the Commissioner is only a piece of evidence and it is not binding on the Court. If the Trial Court finds that a report of the Commissioner is necessary, it is always open to it to appoint a Commissioner to clarify any doubt and decide the dispute in controversy between the parties. When there is no dispute regarding the identity of the property, merely because a joint trial was ordered, the defendants cannot ask for appointment of a Commissioner. When the burden is on the plaintiff to establish his/her case, the appointment of Commissioner is not necessary and the order of the Trial Court, dismissing the same, is correct and no interference is warranted and hence, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub-Assistant Registrar

To

- 1.The District Munsif Court, Musiri.
- 2.The Tahsildar, Office at Thasildar Musiri,
Musiri Taluk, Trichy District.
- 3.The Revenue Divisional Officer,
Office at Revenue Divisional Officer,
Musiri, Musiri Taluk, Trichy District.
- 4.The District Collector, Office at Trichy District Collectorate,
Trichy District.

+1cc to Mr.K.Govindarajan, Advocate, in SR. No.14546.