



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

C.R.P.(PD) (MD) No.863 of 2015

and

M.P.(MD) No.2 of 2015

1.Kaliraj

2.K.Bama

3.K.Amaranth

4.K.Gopikrishna

5.K.Saravanan

..Petitioners/Respondents/Defendants

-vs-

Sri Renuga Soft X Towels (P) Ltd.,
rep.by it's Managing Director

N.Jegadeesan, having office at
87, Cumbum Road, Theni

..Respondent/Petitioner/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair order and decreetal order dated 31.03.2015, passed in I.A.No.143 of 2015 in O.S.No.165 of 2015, passed by the learned Subordinate Judge, Theni.

For Petitioners : Mr.C.Jeganathan

O R D E R

The order appointing Advocate Commissioner is challenged in this civil revision petition at the instance of the defendants in O.S.No.165 of 2015, on the file of learned Subordinate Judge, Theni.

2. The respondent filed a suit in O.S.No.165 of 2005, before the Court below, against the petitioners, praying for a Judgment and Decree of permanent injunction to restrain the petitioners from interfering with their possession or dispossessing them from the suit properties otherwise than due process of law. The respondent along with the suit, filed an interlocutory application in I.A.No.143 of 2015 for appointment of Advocate Commissioner to note down the physical feature of the suit properties and to submit a report.

3. The respondent, in the affidavit filed in support of the interlocutory application, contended that they have installed a transformer on the north eastern end of suit Item-2 property to generate electricity. Similarly, they have constructed superstructure for the purpose of their business. The respondent alleged that the petitioners made an attempt to destroy the existing features in suit Item No.2 and as such it is necessary to appoint an Advocate Commissioner to report the existing physical features of the suit properties.

4. The learned Trial Judge allowed the interlocutory application and appointed an Advocate Commissioner *ex parte* in the light of the background facts. The order, dated 31 March, 2015, is under challenge in this civil revision petition.



5. The learned counsel for the petitioners contended that the attempt was only to collect evidence. According to the learned counsel, while appointing Advocate Commissioner *ex parte*, the learned Trial Judge failed to take into account the legal position that Commissioner cannot be appointed for the purpose of collecting evidence on behalf of parties. The learned counsel placed reliance on the decision in *Elango v. Kasthuri*, reported in 2009 (5) CTC 706 in support of his contention.

6. The respondent filed a suit in O.S.No.165 of 2015, before the Court below, alleging that the petitioners made an attempt to dispossess them from the suit properties otherwise in the manner known to law. The respondent wanted the physical features of the suit properties to be noted down before taking further proceedings in the suit. Though the Commissioner was appointed *ex parte*, the fact remains that before inspecting the suit properties, notice was issued to the petitioners also. Merely because Commissioner was appointed *ex parte*, it cannot be said that the intention was to collect evidence.

7. The affidavit filed in support of the interlocutory application justified the action taken by the respondent for appointment of Advocate Commissioner. Such being the factual position, I do not find any error or illegality in the order warranting interference by exercising the revisional jurisdiction under Article 227 of the Constitution of India.

8. In the upshot, I dismiss the civil revision petition. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To:

The Subordinate Judge,
Subordinate Court,
Theni.

+1CC to M/s.Veerakarthishavan, Advocate in SR.21461

C.R.P. (PD) (MD) No.863 of 2015
and
M.P. (MD) No.2 of 2015
23.04.2015

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