

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.01.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.4674 of 2015
and M.P.No.1 of 2015

1.Kannan

2.Ranganathan

.. Petitioners/Defendants

Vs.

Baby Ammal

.. Respondent/Plaintiff

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 16.06.2015 made in I.A.No.181 of 2015 in O.S.No.99 of 2013 on the file of the District Munsif Court, Gudiyattam, Vellore District.

For Petitioners : Mr.R.Vinothkumar

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 16.06.2015 made in I.A.No.181 of 2015 in O.S.No.99 of 2013 on the file of the District Munsif Court, Gudiyattam, Vellore District.

2.The respondent herein as a plaintiff filed a suit in O.S.No.99 of 2013 for injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property and other reliefs. The defendants filed a written statement and contesting the suit. During pendency of the suit, the defendants/revision petitioners herein have come forward with an application in I.A.No.283 of 2013 for appointment of Advocate Commissioner to measure the suit property with the help of Taluk Surveyor and to note down the physical features. On 12.07.2013, the trial Court allowed the application and that the Commissioner was appointed and the defendants are directed to pay a sum of Rs.3,000/- as Commissioner's fees and posted for filing Commissioner's report and plan on 23.08.2013. Since the defendants have not paid the remuneration of the Advocate Commissioner, no steps have been taken and the application was dismissed on 22.10.2013. The defendants without filing any application to restore the said application, filed the present application in I.A.No.181 of 2015 for appointment of Advocate Commissioner. The trial Court, after hearing both sides, dismissed the present application stating that once the Commissioner was appointed in I.A.No.283 of 2013 and the same was dismissed as the

defendants have not complied with the order, the defendants without taking any steps to restore the same, have again come forward with the present application for the same relief, which is hit by *res judicata*. Challenging the said impugned order, the defendants have preferred this revision.

3. Heard the learned counsel for the revision petitioner and perused the materials available on record.

4. The respondent herein as a plaintiff filed the suit for bare injunction stating that originally the suit property belongs to one Magadevan, who got the same by way of a registered sale deed dated 25.07.1957 and from that date onwards, he has been in possession and enjoyment of the suit property. The said Magadevan sold the same to one Settu, who is none other than the husband of the plaintiff by way of a registered sale deed dated 05.03.1979 and from that date onwards, the said Settu was in possession and enjoyment of the suit property. He died intestate leaving behind his wife and only son Tamilselvan. After the death of her husband, the plaintiff and her son have been in possession and enjoyment of the suit property. Since the defendants attempted to interfere with the

plaintiff's peaceful possession and enjoyment of the suit property, she was constrained to file the suit for the aforesaid relief.

5.The defendants/revision petitioners filed the written statement stating that without prayer for declaration of title, the suit for permanent injunction is not maintainable. It was further stated that the defendants are adjacent land owners and the survey number of their land is S.No.377/6 with an extent of 1.22 Acres and the defendants are entitled to 0.47 cents. The plaintiff alone has encroached upon the said property of the defendants. In para-10 of the written statement, they stated that if the Commissioner is appointed, he would find out the real owner. Immediately, the defendants filed the application in I.A.No.283 of 2013 for appointment of Advocate Commissioner. That application was allowed and the Commissioner was appointed on 12.07.2013. Since the defendants have not paid the Commissioner's fee, Commissioner was unable to execute the warrant. So that application was dismissed. It is to be noted that the defendants without filing an application for restore the earlier application, filed fresh application in I.A.No.181 of 2015 for appointment of Advocate Commissioner. Since earlier application was decided on merits, I do

not find any reason to interfere with the order passed by the trial Court in the present application. Admittedly, the Commissioner has been appointed in pursuance of the order dated 12.07.2013 made in earlier application. Since the defendants have not taken any steps to comply with the order, that application was dismissed. Under such circumstances, the defendants cannot seek the same relief by way of filing another application for appointment of Advocate Commissioner. Therefore, the order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The revision is dismissed as devoid of merits.

6. In fine, the Civil Revision Petition stands dismissed. However, the defendants/revision petitioners are at liberty to file an application to restore the application in I.A.No.283 of 2013 and to work out his remedy. No costs. Consequently connected Miscellaneous Petition is closed.

08.01.2016

Index: Yes/No

kj

R.MALA,J.

kj

To

The District Munsif Court, Gudiyattam, Vellore District.

C.R.P(PD).No.4674 of 2015
and M.P.No.1 of 2015

08.01.2016