

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

C.R.P.(PD).No.4761 of 2015
& M.P.No.1 of 2015

1. Radha
2. Pusha
3. Anbarasan
4. Mangammal
5. Amudha
6. Ramesh
7. Nagaraj

... Petitioners

Vs.

Mahilan

... Respondent

Prayer:- Petition filed under Article 227 of the Constitution of India, against the fair order and decreetal order dated 18.8.2015 made in I.A.No.228 of 2015 in O.S.No.50 of 2013 on the file of the Subordinate Court, Harur.

For Petitioners : Mr.V.R.Annagandhi

ORDER

The petitioner has come forward with the above Civil Revision Petition challenging the order dated 18.8.2015 made in I.A.No.228 of 2015 in O.S.No.50 of 2013 on the file of the Subordinate Court, Harur for dismissing the application filed under Order 26 Rule 9 of Code of Civil Procedure.

2. At the time of admission, the arguments of the learned counsel for the petitioners are heard in length. Considering the nature of order passed herein, notice to respondent is dispensed with.

3. Learned counsel appearing for the petitioners would submit that the respondent as plaintiff filed suit for partition and separate possession of 2/3rd share in the suit property and paid the court fee under Section 37(2) of Court Fees Act.

4. As per the plaint averments, the plaintiff is out of possession of suit property and during the pendency of the suit, the first revision petitioner herein, who is the first defendant filed application in I.A.No.228 of 2015 for appointment of Advocate Commissioner to find out the physical features and file a report. After hearing both sides, the trial court has dismissed the said I.A., against which, the present revision petition has been filed.

5. The learned counsel appearing for the revision petitioners would submit that to prove the possession and enjoyment of the suit property and that the plaintiff is out of possession, appointment

of Advocate Commissioner is necessary and that aspect has not been considered by the trial court. The learned counsel thus prayed for setting aside the order dated 18.08.2015 made in I.A.No.228 of 2015.

6. I have considered the submissions made by the learned counsel for the revision petitioners and perused the typed set of papers.

7. As per the plaint averments, the suit property is originally belonged to one Pachiappan and he died intestate, who had 5 sons and the revision petitioners herein are the children of 1st son of Pachiappan viz., Ramachandran. The plaintiff viz., Mahilan is the son of last son of Pachiappan viz., Vijayan and the said Mahilan/Plaintiff is claiming 2/3rd share in the suit property. The 3rd defendant viz., Anbarasan filed written statement stating that Ramachandran purchased the suit property and he died on 27.05.2007 leaving behind his legal heirs viz., his wife Radha-1st defendant and defendants 2 to 6, who are the children of Ramachandran and Radha.

R.MALA,J.

8. It is seen that now the suit has been posted for chief-examination. Exhibits P.1 to P.10 were marked. At the time of cross-examination, application in I.A.No.228 of 2015 has been filed to prove possession and thus sought for appointment of Advocate Commissioner.

9. It is a well settled dictum of Apex court that Advocate Commissioner cannot be appointed to collect evidence to find out factum of possession; as far as factum of possession is concerned, Court alone gather evidence through parties and it cannot entrust said matter to Advocate Commissioner to collect evidence. Thus the trial court has rightly dismissed the application filed in I.A.No.228 of 2015. In view of the foregoing discussion, I do not find any reason to interfere with the findings of the court below. Accordingly, this Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected M.P., is closed.

05.01.2016

nvsri
To
The Subordinate Court, Harur.

C.R.P.(PD).No.4761 of 2015