

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.(PD) No.1157 of 2013
and M.P.No.1 of 2013

1. Karthikeyan
2. Vasanthamani

... Petitioners

Vs.

1.Arumugam
2.Saraswathi
3.Balakrishnan

.. Respondents

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 29.11.2012 passed in I.A. No.119 of 2012 in O.S. No.58 of 2012, on the file of the Additional District Munsif Court, Tiruchengode.

For Petitioners	:	Mr.Venkataswamy Babu
For Respondents	:	Mr.N.Manokaran

ORDER

The facts narrated by the counsel for the petitioners are that the petitioners filed a suit in O.S.No.58 of 2012, for permanent injunction restraining the defendants from interfering with the peaceful possession of the suit schedule property. The petitioners also filed a petition for appointment

of an Advocate Commissioner in I.A. No.119 of 2012. The prayer sought for in I.A.No.119 of 2012 is that, to appoint a Court Commissioner to inspect the suit properties and note down the physical features in and around the suit properties and directing the Commissioner to measure the suit properties in S.No.90/1A and S.No.89 in 48 T.Kailasampalayam and the respondents / defendants property and fix the East West boundary line between their properties and the respondents / defendants land and etc. with qualified surveyor with the help of V.A.O. and file his report with plan as drawn to scale.

2. The learned counsel appearing for the respondents contended that the prayer sought for in the petition is beyond the scope of the main suit itself and it will amount to collection of evidence and further beyond the scope of the relief sought for in the plaint.

3. Heard both sides.

4. It is clear from the facts of the case that there were partition deeds and sale deeds between the families of the petitioners and respondents. Those documents are neither produced nor examined. That apart, there are disputes with regard to the extent of lands between the petitioners and the

respondents. Those disputes are also not adjudicated in the suit. In the absence of all those documents and adjudications, the appointment of an Advocate Commissioner will certainly create a favourable circumstance to any one of the parties and will not serve the purpose for adjudication of the present suit, which was filed with a prayer for permanent injunction. Therefore, the findings of the trial Court that the appointment of an Advocate Commissioner will lead to creation of evidence is certainly possible and therefore, there is no error in the findings of the Court below.

5. Therefore, this Court is of the opinion that the prayer sought for by the petitioner is beyond the scope of the main relief and the same cannot be granted and if the same is granted, it will amount to allowing the main prayer in the suit itself.

6. Hence the Civil Revision Petition is devoid of merits and accordingly the order passed by the Additional District Munsif Court, Tiruchengode dated 29.11.2012 in I.A. No.119 of 2012 in O.S. No.58 of 2012 is confirmed and Civil Revision petition is dismissed. No order as to costs. Consequently connected miscellaneous petition is also closed.

06.10.2016

S.M.SUBRAMANIAM, J.

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To
The Additional District Munsif Court,
Tiruchengode.

C.R.P. (PD) No.1157 of 2013

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