

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.1359 of 2016

and

C.M.P.No.7597 of 2016

1.Shanmugam
2.Venkatesan

... Petitioners

vs.

1.Sarful Haq
2.Anwar Basha
3.Akbar Basha
4.Asraf Basha
5.Mohammed Irfan
6.Irshad Ahmed
7.Mohammed Sufeeyan

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order of the District Munsif, Katpadi, Vellore District dated 20.01.2016 made in I.A.No.983 of 2015 in O.S.No.17 of 2014.

For Petitioner : Mr.S.P.Vijayaragavan

ORDER

The plaintiff who has filed the suit for a bare injunction regarding three items of suit properties defined with survey numbers, extents and boundaries, chose to file an interlocutory application in I.A.No.983/2015 in the said suit O.S.No.17/2014 on the file of the District Munsif, Katpadi, Vellore District for appointment of an Advocate-Commissioner to note the physical features of the suit property and submit a report and a plan. The learned trial

Judge dismissed the same holding that the purpose of filing of the application for appointment of a Commissioner was only for prolonging the case. It is as against the said order of the trial court dated 21.06.2015, the present civil revision petition has been filed.

2. The matter stands listed today for admission. The arguments advanced by Mr.S.P.Vijayaragavan, learned counsel for the petitioners are heard. The materials available on record are also perused.

3. The petitioners having filed the suit for bare injunction in respect of specified properties described in the plaint schedule with survey number, extents and boundaries, have approached the trial court with an application for appointment of an Advocate Commissioner for the purpose of noting the physical features and taking photographs of the suit properties.

4. The learned trial Judge, after considering the rival contentions, especially the averments made in the supporting affidavit, came to the conclusion that the said averments would go to show that the plaintiffs were not even aware of the location of their properties. Observing further that if at all the plaintiffs were in possession of the suit properties, they could prove the same by adducing oral and documentary evidence and that in case the plaintiffs were not able to fix the boundaries, they should have filed the suit for fixation of the boundaries and that as the plaintiffs had not approached the court for fixation of boundaries, the trial court held that the application filed for appointment of a Commissioner to note the physical features and take photographs of the suit properties was not *bona fide* and it was done with an

intention of prolonging the case. The said finding of the trial court, cannot be found fault with. Moreover when the plaintiffs have come forward with a clear plea that they are in possession and enjoyment of the property that are succinctly defined with all features in the plaint, the appointment of an Advocate-Commissioner to note the physical features and take photographs will not not help the court to elucidate the issues that have arisen in the suit. Hence this court comes to the conclusion that the challenge made to the order passed by the trial court is bound to fail. The revision does not even merit admission and the same deserves dismissal at the threshold.

Accordingly, the civil revision petition is dismissed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is also dismissed.

28.04.2016

Index : Yes
Internet : Yes
asr

To

The District Munsif, Katpadi, Vellore District

P.R.SHIVAKUMAR, J.

asr/-

C.R.P (PD) No.1359 of 2016
and
C.M.P.No.7597 of 2016

28.04.2016