

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.1596 of 2016
and
C.M.P.No.8689 of 2016

1.P.James
S/o.Sadaiyan

2.K.Prema
W/o.P.James

3.J.Premkumar
S/o.P.James

... Petitioners

vs

1.A.David @ Dhandapani
S/o.Ammasai

2.R.Ponnaiyan
S/o.Ramasamy @ Veeran

3.R.James @ Jayaraman
S/o.Ramasamy @ Veeran

4.R.Ramasamy
S/o.Ramasamy @ Veeran

5.P.Mohanasundaram
S/o.Palanisamy

6.P.Venkatachalam
S/o.Palanisamy

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of learned Principal District Munsif, Erode, passed in I.A.No.126 of 2016 in O.S.No.69 of 2012 on 19.02.2016.

For Petitioners : Mr.N.Manokaran

ORDER

This revision challenges the order of learned Principal District Munsif, Erode, passed in I.A.No.126 of 2016 in O.S.No.69 of 2012 on 19.02.2016.

2. Respondents/plaintiffs have filed O.S.No.69 of 2012 on the file of learned Principal District Munsif, Erode, seeking declaration declaring the plaintiffs right to use the 'B' schedule property in common with the defendants, directing the defendants to remove the obstruction over 'B' schedule property and for other reliefs. Petitioners/defendants have filed I.A.No.126 of 2016 in O.S.No.69 of 2012 towards re-opening the evidence on the side of the defendant for the purpose of further examination and to mark some documents. The Court below, under orders dated 19.02.2016, dismissed such application. Hence, this revision.

3. Heard learned counsel for petitioners.

4. This Court merely would record the operative portion of the order of the Court below to inform why this revision is to be dismissed. The operative portion of the order of the Court below reads thus:

“7. On perusal of the records, this is the 3rd similar petition filed by the petitioners to examine witness on their side. This petition is filed to examine the Agricultural Officer of Sivagiri to prove the age of coconut trees. According to the petitioners, the suit is filed for the relief of mandatory injunction to remove the coconut trees. But the prayer in the suit is to remove the encroachments in the alleged cart track. The petitioners have already filed commission petitions to note down the physical features and the report is also filed under Ex.C1 to Ex.C4. At this juncture, the petitioners themselves requested the Agricultural Officer of Sivagiri to assess the age of coconut trees. On perusal of the petition enclosures, it could be found that the report of the agricultural officer is filed. If at all, the petitioner wants to prove the same, he can very well shown the same to the learned advocate commissioner who has already visited the property. He has not sought for any relief with the court to assess the age of the coconut trees. The suit is filed in the year 2012 and the petitioners has produced the report of the Agricultural Officer dated 13.1.2016. When already two similar petitions allowed by this court, the petitioners herein are filing the similar petition one after the other for examination of witnesses on their side. If

at all the petitioners willing to examine any witness, they ought to have filed the list of witnesses in the earlier petition and very well would have summoned the witness. More over, in what capacity the Agricultural Officer was requested to give the report is unknown to the court. When already the commissioner has visited the property twice, the petitioner ought to have shown the coconut trees and would have obtained the report mentioning the age of the coconut trees. Failing all his attempts, the petitioners herein, filing one petition after another which is after thought one. Section 151 of CPC is an inherent power wherein the discretion of the court shall be utilized. This case is already posted for arguments and the petitioners herein filing one after another petition for examination of witness by reopening the case. Hence I hold there is no merits in the petition filed by the petitioners.”

The Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.06.2016

Index:yes/no
Internet:yes
gm

To

The Principal District Munsif,
Erode.

C.T.SELVAM, J

gm

Civil Revision Petition (PD) No.1596 of 2016

09.06.2016