

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2016

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

C.R.P.(PD) No.2089 of 2016
and
C.M.P.No.10921 of 2016

1.V.Narayanasamy
2.Muthalammal

... Petitioners

vs.

N.Sundra Moorthy

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 31.03.2016 in I.A.No.17 of 2015 in O.S.No.349 of 2011 on the file of the Additional District Munsif Court, Chengam.

For Petitioners : Dr.R.Gouri

For Respondent : Mr.C.Munusamy

ORDER

The petitioners filed a suit for declaration and injunction against the respondent. In the said suit, the respondent filed an Application in I.A.No.17 of 2015 for appointment of an Advocate Commissioner to inspect the suit property and to report about the pipeline embedded in the land. The Application was allowed by the learned trial Judge notwithstanding the objection raised by the

petitioners. The order is under challenge in this revision petition.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondent.

3. The suit was instituted by the petitioners for declaration and injunction. It is for the petitioners to plead and prove that they are entitled to a decree for declaration in respect of the suit property. It is not as if the respondent is bound to prove that the petitioners are not entitled to the suit property. The burden is always on the plaintiff to plead and prove that they are entitled to declaration.

4. The learned trial Judge without stating any justifiable reasons allowed the application by making an observation that no prejudice would be caused to the petitioners by appointing an advocate commissioner. It is not the question of prejudice. In a matter of this nature, the Court must ascertain as to whether such appointment is necessary for the purpose of deciding the issue raised by the parties. The present suit is a suit for declaration and injunction. The burden is clearly on the petitioners to prove their case. I am therefore of the considered view that the learned trial Judge was not correct in

appointing an advocate commissioner for the purpose of reporting about the pipeline embedded in the property.

5. In the result, the order dated 31.03.2016 in I.A.No.17 of 2015 in O.S.No.349 of 2011 on the file of Additional District Munsif Court, Chengam, is set aside. The Civil Revision Petition is allowed. No costs. Connected Miscellaneous Petition is closed.

23.09.2016

Index : yes / no

Internet :yes / no
asvm

Copy to :

1.The Additional District Munsif Court,
Chengam.

K.K.SASIDHARAN, J.

(asvm)

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