

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2669 of 2016 and
CMP.No.13823 of 2016

1.P.Jayarangaraman
2.Vittobai
3.P.J.Saravanakumar

...Petitioners

versus

Selvam @ Rangasamy

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, challenging the fair and decreetal order dated 08.02.2016 in I.A.No.2473 of 2015 in O.S.No.25 of 2012 passed by the learned Principal District Munsif Court, Kallakurichi, dismissing the petition for appointment of Advocate Commissioner.

For Petitioners : Mr.Shakespeare

For Respondent : Mr.N.Damodaran

ORDER

The respondent filed a suit for declaration, consequential injunction and recovery of possession against the petitioners. The suit was contested by the petitioners by filing written statement.

2. The petitioners in the said suit filed an application for appointment of Advocate Commissioner. The application was opposed by the respondent. The Trial Court dismissed the application primarily on the ground that the attempt was only to collect evidence. Feeling aggrieved, the unsuccessful petitioners in I.A.No.2473 of 2015 are before this Court.

3. Heard the learned counsel for the petitioners and the learned counsel appearing on behalf of the respondent.

4. The suit in O.S.No.25 of 2012 is essentially a suit for declaration and recovery of possession. The identity of the property has to be fixed by the Trial Court on the basis of evidence. The petitioners filed an application for appointment of Advocate Commissioner taking into account the fact that several survey numbers were mentioned in the schedule to the plaint in O.S.No.25 of 2012. The Trial Court was of the view that the parties have to adduce evidence and the same cannot be permitted through Advocate Commissioner.

5. After hearing the learned counsel for the parties at length and on a perusal of the pleadings, I consider it deem and fit to restore the application in I.A.No.2473 of 2015.

6. The learned Principal District Munsif, Kallakurichi, is directed to consider the application in I.A.No.2473 of 2015 afresh after conclusion of trial. The Trial Court shall decide the application in the light of the evidence adduced by the parties. In short, it is for the Trial Court to decide the issue purely on merits. The appointment of Advocate Commissioner would be made only in case, the Trial Court is of the view that for effective adjudication of the matter, a report should be called for by appointing an Advocate Commissioner.

7. The Civil Revision Petition is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

07.11.2016

Index : Yes/No
svki

To
The Principal District Munsif Court, Kallakurichi

K.K.SASIDHARAN, J.

(svki)

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