

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.11.2016**

CORAM:

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

C.R.P.(P.D.) No.2723 of 2016

1.M.Marimuthu
2.M.Vasanthakokilam : Petitioners
versus

1.Tiruvenkadam
2.Mariamprakasam : Respondents

PRAYER: Revision filed against the order dated 17 March 2014, in I.A.No.124 of 2014 in O.S.No.164 of 2013 on the file of the I Additional District Munsif, Salem.

For petitioners :: Mr.R.G.Annamalai

For respondents :: Mr.P.Jagadeesan

ORDER

The petitioners filed a suit for injunction before the I Additional District Munsif, Salem, in O.S.No.164 of 2013. In the said suit, the petitioners filed an interlocutory application for appointment of Advocate Commissioner to inspect the suit property and note down the physical features. The application was opposed by the respondents. The learned Trial Judge by way of a brief order, dismissed the application primarily on the ground that attempt was only to collect evidence. The said order is under challenge.

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

3. There is no dispute that the suit in O.S.No.164 of 2013 is a suit for injunction. The petitioners have to plead and prove that they are in possession of the property. The petitioners filed an application in I.A.No.124 of 2014 on the ground that in case a report is called for, it would help the Court to dispose of the suit in an effective manner.

4. The Trial Court was expected to consider as to whether there was any merit in the application filed by the petitioners. There is no question of dismissing the application by way of a one line order saying that the attempt is to collect evidence.

5. It is true that it is for the Trial Court to decide as to whether appointment of Advocate Commissioner is necessary in a suit for injunction. Even then, the order should be supplemented by reasons. Since the order is bereft of reasons, I am of the view that the order is liable to be set aside.

6. The order in I.A.No.124 of 2014 is set aside. The application in I.A.No.124 of 2014 is restored to file.

7. The learned I Additional District Munsif, Salem, is directed to

consider the application afresh, after the conclusion of trial. However, I make it clear that it is for the Trial Court to decide the application on the basis of the available materials on record to take a decision as to whether such appointment is necessary.

8. The civil revision petition is disposed of with the above direction.
No cost.

08.11.2016

Index:Yes/no
tar

To
The I Additional District Munsif Court, Salem.

K.K.SASIDHARAN, J.

(tar)

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