

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **23.09.2016**

CORAM:

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

C.R.P.(P.D.)No.3008 of 2016 and
CMP.No.15185 of 2016

G.Venkatachalam

...Petitioner

versus

1.N.C.Narayanan
2.N.C.Arumugam
3.N.C.Arjunan
4.K.Sridhar
5.K.Velmurugan
6.K.Santhanam
7.K.Rajammal

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order dated 26.02.2016 in I.A.No.1023 of 2014 in O.S.No.482 of 2014 on the file of I Additional District Munsif Court, Erode.

For Petitioner : Mr.S.Kaithamalai Kumaran

ORDER

The respondents in a suit for declaration and injunction filed an application for appointment of Advocate Commissioner to inspect the suit property and measure the same with the help of Surveyor and to report about the physical features. The application was allowed, notwithstanding the objection raised by the petitioner. The order passed by the learned Trial Judge appointing Advocate Commissioner is under challenge in this Civil

Revision Petition.

2. The learned counsel for the petitioner contended that the respondents earlier filed a suit for injunction. The suit was dismissed by the Trial Court and the same was confirmed by the lower Appellate Court. The present suit is therefore barred by limitation. According to the learned counsel, it was only for the purpose of collecting evidence, the respondents have filed the application for appointment of Advocate Commissioner.

3. There is no dispute that the respondents earlier filed a suit for injunction. The suit was dismissed and the judgment was upheld in appeal. It is also a matter of record that the present petitioner filed an application in the earlier appeal filed by the respondents for a mandatory injunction to remove the barbed wire fence stated to have been erected by the respondents. Since the appeal was dismissed, there was no order in the said application. The application in I.A.No.1023 of 2014 was filed by the respondents for the purpose of appointing Advocate Commissioner to measure the property on the basis of their documents. There was a further request to measure the property of the petitioner on the basis of his document. Since it is a suit for declaration, the Court has to fix the identity of the property. The learned Judge having found that for effective adjudication of the matter, appointment of Commissioner is necessary, appointed the Advocate Commissioner. The discretionary order passed by the learned Trial Judge does not call for

interference in this Civil Revision Petition under Article 227 of the Constitution of India.

4. In the up shot, I dismiss the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed.

23.09.2016

Index : Yes/No

svki

To

The I Additional District Munsif Court, Erode.

K.K.SASIDHARAN, J.

(svki)

C.R.P.(P.D.) No.3008 of 2016

23.09.2016