

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

CRP (PD) NO.306 OF 2016
AND CMP NO.1635 OF 2016

1.Raghu

2.Jeyamani

3.Prakash

4.Settu

5.Ilayaraja

6.Ilanchezhiyan

... Petitioners

Versus

Chinnathangam

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 22.12.2015 made in I.A.No.402 of 2015 in O.S.No.112 of 2011 on the file of the District Munsif cum Judicial Magistrate, Pappireddypatti.

For Petitioners : Mr.C.Munusamy

For Respondent : Mr.R.Neelakandan

ORDER

The respondent filed a suit for declaration and recovery of possession in O.S.No.112 of 2011 before the learned District Munsif cum Judicial Magistrate, Pappireddypatti. The suit was contested by the petitioners by filing written statement.

2. The petitioners after commencement of the trial filed an application in I.A.No.402 of 2015 for appointing an Advocate Commissioner to inspect and note down the physical features of the suit property with the help of a qualified surveyor. The application was opposed by the respondent by filing counter. The learned Trial Judge dismissed the application. The order is under challenge in this Civil Revision Petition.

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.112 of 2011, being a suit for declaration on the basis of title, it is for the respondent to plead and prove that she is entitled to a decree, on the strength of her title. It is not as if the petitioners are bound to prove the negative.

5. After hearing the learned counsel for the parties, I am of the view that the matter requires fresh consideration by the learned Trial Judge.

6. The order dated 22.12.2015 is set aside. The application in I.A.No.402 of 2015 in O.S.No.112 of 2011 is restored to file.

7. The learned District Munsif cum Judicial Magistrate, Pappireddypatti is directed to dispose of the application in I.A.No.402 of 2015 in O.S.No.112 of 2011 afresh, on merits and as per law, after conclusion of trial. In short, it is for the learned Trial Judge to decide whether appointment of Advocate Commissioner is necessary, taking into account the pleadings and the evidence on record.

8. The Civil Revision Petition is disposed of with the above direction. No costs. Consequently, connected civil miscellaneous petition is closed.

09.11.2016

TK

K.K.SASIDHARAN, J.

TK

To

The District Munsif cum Judicial Magistrate
Pappireddypatti.

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