

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P.(PD).No.3026 of 2013

and

M.P.No.1 of 2013

1. J.Kasinathan

2. Mallika ... Petitioners

- Vs -

Santhi ... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 10.10.2012 and made in I.A.No.761 of 2011 in O.S.No.145 of 2011 on the file of the Principal District Munsif, Virudhachalam.

For Petitioners : Mr.J.Antony Jesus

For Respondent : No Appearance

ORDER

The fair and decreetal order dated 10.10.2012 and made in I.A.No.761 of 2011 in O.S.No.145 of 2011 on the file of the Principal District Munsif, Virudhachalam are under challenge in this revision.

2. The revision petitioners are the defendants in the suit whereas the respondent is the plaintiff.

3. The respondent/plaintiff seems to have filed the above suit as against the revision petitioners seeking the relief of declaration to declare her title over the suit property and also for the consequential relief of permanent injunction. According to the respondent/plaintiff, the suit property is comprised in R.S.No.109/2 at Ruba Narayana Nallur Village measuring an extent of 1 acre i.e., 0.48.4 Hectare bearing Patta No.81. The revision petitioners have contested the suit by filing their written statement. It is the specific case of the revision petitioners that the suit property which is comprised in S.No.109/2 is belonged to them; but the respondent/plaintiff has claimed right over the land.

4. According to the revision petitioners, the suit property comprised in S.No.109/2 is their ancestral property and that the property comprised in S.No.109/1 was purchased by them and therefore, they have possession and enjoyment of both the properties comprised in S.No.109/2 as well as 109/1. It is apparent that the respondent/plaintiff has claimed right over the property based on her title. According to her, her husband had executed a settlement in her favour bequeathing the suit property on 19.01.2011 but this fact was

denied by the revision petitioners and in fact they are claiming right over the property saying that they have been in possession and enjoyment of their property as their ancestral property. When the matter stood thus, the revision petitioners had taken out an application in I.A.No.761 of 2011 under Order 26 Rule 9 of C.P.C. for appointment of Advocate Commissioner to note down the physical features of the petition mentioned property and to file a report. They have specifically claimed that they had put up a thatched shed with concrete pillar in the suit property. According to them they had also put up an another thatched shed in the suit property comprised in S.No.109/2. In order to prove their possession, they wanted to appoint an Advocate Commissioner to place an exact topographical sketch about the existence of the thatched shed over the suit property, which is said to have put up by them.

5. When the matter was taken up for hearing, Mr.J.Antony Jesus, learned counsel for the revision petitioners was present. Despite service of notice, the respondent has not chosen to appear. Mr.J.Antony Jesus has submitted that though the respondent/plaintiff as well as the revision petitioners/defendants have claimed their respective title over the suit property, since the revision petitioners/defendants have claimed specifically that they have been in possession and enjoyment of the suit property by put up a thatched shed an appointment of Advocate Commissioner is absolutely

necessary so as to establish and substantiate their claim of possession.

6. Mr.J.Antony Jesus, has also submitted that the purpose of appointment of Advocate Commissioner is to locate the thatched shed and to say as to whether it is in existence on the northern side of the suit property or the southern side. But, the learned Trial Judge has observed that *"on bare reading of plaint and written statement, it clearly shows that both the plaintiff and the defendants wanted to establish their respective title and possession over the suit property and nothing else. In the said circumstance the only point to be considered is as to whether any legal necessity arises in the present suit for appointment of Advocate Commissioner to inspect the suit property and note down its physical features."*

7. As envisaged under Rule 9 of Order 26 of C.P.C., only for the purpose of elucidating the matter in dispute the Court may issue Commission. Insofar as this case is concerned, the revision petitioners have claimed that the suit property comprised in S.No.109/2 is their ancestral property and the other property comprised in S.No.109/1 was purchased by them and therefore, they have been in possession and enjoyment of both properties together and they have also claimed that they had put up thatched shed over the said properties. Under this circumstance, this Court finds that there is some force in the argument advanced by the learned counsel for the petitioner. Since the revision petitioners have claimed that they had put up thatched shed in the

suit properties and for the purpose of establishing their possession, the appointment of Advocate Commissioner is very much essential.

8. Keeping in view of the above facts, this Court finds that the order as well as finding of the trial court are not sustainable and liable to be set aside. This Court is also of the view that the respondent would not be put into any prejudice if an Advocate Commissioner is appointed.

9. In the result, the revision petition is allowed and the impugned order dated 10.10.2012 is set aside and the application in I.A.No.761 of 2011 is allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

10. The learned Principal District Munsif is directed to appoint an Advocate Commissioner from the panel which is being maintained by this Court with a direction to file his report within a period of 15 days from the date of receipt of a copy of this order.

10.11.2016

Index:Yes/No
Internet:Yes/No
ssn

T.MATHIVANAN, J.,

ssn

To

The Principal District Munsif,
Virudhachalam.

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