

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.799 of 2016

&

C.M.P.No.4433 of 2016

1.Jadaiyan
2.Shanmugam
3.Vajjaram

... Petitioners

vs.

Chinnathai

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 14.07.2015 made in C.M.A.No.5 of 2013 on the file of Sub-Judge, Harur against the order dated 08.04.2013 made in I.A.No.361 of 2013 in O.S.No.196 of 2010 on the file of District Munsif Court, Harur.

For Petitioner : Mr.M.Selvam

ORDER

Heard the learned counsel for the petitioner.

2. This revision has been preferred against the judgment and decretal order of the learned Subordinate Judge, Harur dated 14.07.2015 made in

C.M.A.No.5 of 2013. The petitioners herein are the defendants in O.S.No.196 of 2010 on the file of the District Munsif Court, Harur. The said suit was filed originally by Lakshmanan against the petitioners herein for a declaration that the properties comprised in S.No.25/8 measuring 0.05.50 Hectares and in S.No.25/9B measuring 0.27.00 Hectares in Naina Goundanpatti Village, Harur Taluk, Dharmapuri District absolutely belonged to him and for a permanent injunction against the petitioners herein not to disturb his peaceful possession and enjoyment of the said property.

3. After the filing of the suit, the said Lakshmanan passed away and his legal heir Chinnathai was impleaded as the second plaintiff. The petitioners in the revision are contesting the suit based on the written statement filed by the third petitioner herein , which was adopted by the other two petitioners. The only defence taken in the written statement is that the entire extent comprised in S.No.25/9B, which is shown as the second item in the plaint schedule, is a cart track and that the plaintiffs wanted to annex the cart track with their property. While so, the petitioners filed an application I.A.No.361 of 2013 in the said suit praying for appointment of an Advocate Commissioner for measuring the length and width of the alleged cart track in S.No.25/9B and submit a report and plan. The same was resisted by the second plaintiff contending that though the suit came to be filed in September 2010 itself, till the examination of the Tahsildar, Harur Taluk as a witness on the side of the plaintiffs and the

records brought by him were marked as Exs.X1 to X5, which show that as per the revenue records there is no cart track in the suit second item, the petitioners did not ask for appointment of a Commissioner for the above said purpose and that when the evidence adduced through the Tahsildar and the documents produced through him had gone against the claim of the petitioners, the petition for appointment of Commissioner came to be filed belatedly with a view to collect evidence in support of their case. Based on the said contention, the second plaintiff prayed for the dismissal of the petition.

4. The learned trial Judge, after hearing both sides, sustained the objection raised by the second plaintiff and dismissed the application filed by the petitioners herein/defendants by order dated 08.04.2013, holding that the attempt was to collect evidence for the proof of their contention, which had to be done by adducing evidence. As against the said order, the petitioners preferred an appeal in C.M.A.No.5 of 2013 on the file of the Sub-Court, Harur. The learned lower appellate Judge, after hearing both sides, concurred with the findings of the trial Court and dismissed the appeal by its judgment and decree dated 14.07.2015.

5. Upon perusing the order of the trial Court and judgment of the lower appellate Court, this Court does not find any ground for interfering with the concurrent findings of the Courts below. The revisional jurisdiction or the

supervisory jurisdiction of the High Court cannot be sought to be enlarged into an appellate Jurisdiction by entertaining revision under Article 227 of the Constitution of India against every order of the trial Court and every judgment of the lower appellate Court. The petition seeking appointment of Appointment Commissioner was dismissed not only on the ground of belatedness, but also on the ground that it was filed for the collection of evidence, which is not permissible. When the petitioners have chosen to contend that entire second item comprised in a particular Survey Number is a cart track, they have to prove it by adducing oral and documentary evidence. They waited till the Tahsildar to be examined, who produced the revenue records, copies of which have been marked as Exs.X1 to X5 showing that as per the revenue records, there is no cart track in the suit second item.

6. The prayer made in the petition for appointment of Commissioner is also innocuous. They have not sought for appointment of an Advocate Commissioner to note the physical features to find out whether on land, any cart track is there or not. On the other hand, the prayer has been couched in such a way that the existence of the cart track is admitted and the Commissioner is to be appointed only for measuring the length and breadth of the cart track. Such an ingenious pleading shows lack of bonafide on the part of the petitioners.

For all the reasons stated above, this court comes to the conclusion that there is no merit in the revision and the same does not even merit admission. Ultimately the revision fails and the same is dismissed at the stage of admission itself. No costs. Consequently, the connected miscellaneous petition is closed.

11.03.2016

Index: Yes/No
Internet: yes/No
gpa

To

The District Munsif Court
Harur

P.R.SHIVAKUMAR.J.,

gpa

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