



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.02.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.1765 of 2015 (PD)

and

M.P.(MD)No.1 of 2015

1.Balaguru
2.Savithiri

.. Petitioners

Vs.

Rengasamy

.. Respondent

PRAYER: Civil Revision Petition is filed, under Article 227 of Constitution of India, to set aside the order dated 08.07.2015 passed in I.A.No.198 of 2014 in O.S.No.6 of 2010 on the file of the District Munsif of Virudhunagar, by allowing this Civil Revision Petition.

For Petitioners : Mr.S.Subbiah

For Respondent : Mr.S.Parthasarathy

ORDER

The petitioners are the defendants whereas the respondent is the plaintiff in O.S.No.6 of 2010.

2.The respondent filed O.S.No.6 of 2010 on the file of the District Munsif Court, Virudhunagar for declaration and permanent injunction restraining the defendants, their men from in any way interfering with his peaceful possession and enjoyment of the suit property and to declare the plaintiff as absolute owner of the suit property. The petitioners filed written statement and is contesting the suit. Issues were framed and posted for Trial. At this stage, the respondent filed I.A.No.198 of 2014 for appointment of Advocate Commissioner to inspect the suit property relating to the Wall situated in the property. According to the respondent, his wife purchased the property from one Radhakrishnan by the deed of sale, dated 16.06.1976 and from that date she is in possession and enjoyment of the property. By the settlement deed, dated 11.11.2002 his wife settled the property in his favour. From that date, he is in possession and enjoyment of the property by paying tax. While so, the first petitioner disturbed the possession of the respondent and stated that the respondent should not construct any building and should not alter



the property. Therefore, he has filed the suit for declaration and injunction. The respondent claims that the property belongs to him and the same was purchased from one Radhakrishnan. While so, the petitioners interfered with the possession of the respondent. Therefore, he has come out with the application for I.A.No.198 of 2014 for appointment of Advocate Commissioner to inspect the property with the help of surveyor and Village Administrative Officer and to file the report. The petitioners resisted the same by filing a counter affidavit stating that already they have filed a suit for declaration and injunction and the same has to be numbered. The respondent has to prove his claim only by way of document and oral evidence and not by collection of evidence. Advocate Commissioner was appointed only for inspection of the suit property and not for collection of evidence. The learned Judge considering the materials on record allowed the application for appointment of Advocate Commissioner. Against that, the petitioner come out with the present Civil Revision Petition.

3.The learned counsel for the petitioners submitted that the issues with regard to the title of the suit has to be decided only by the documents and not by the report of the Advocate Commissioner. The learned Judge erred in ordering the appointment of Advocate Commissioner to collect the evidence.

4.Heard Mr.S.Subbiah, learned counsel appearing for the petitioners and Mr.S.Parthasarathy, learned counsel appearing for the respondent.

5. I have carefully perused the entire materials on record and arguments of counsel for the petitioner.

6.From the records it is seen that the suit property is purchased by the wife of the respondent and was settled on respondent. He is enjoying the same by paying Tax. The petitioners also purchased the property from the same vendor. The contention of the learned counsel for the respondent that the petitioners are interfering with the possession of the enjoyment of the property and the same can be ascertained only by inspection and noting physical features and from the report of the Advocate Commissioner. It is not for the collection of evidence. The trial has not yet commenced. Therefore, there is no illegality or irregularity in the order passed by the learned Judge.

7.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar

<https://hcservices.ecourts.gov.in/hcservices/> /True copy/

Sub Assistant Registrar



To
The District Munsif, Virudhunagar.

+one cc to M/s.S.Subbiah, Advocate in SR.No.8879

+two cc's to M/s.S.Parthasarathy, Advocate in SR.No.8245

am

SDR/GSV-PM/11.05.2016 :3P/5C

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