



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.253 of 2016 (PD)

and

C.M.P.(MD)No.1049 of 2016

1.Kala

2.Thenniah

3.Arunachalam

.. Petitioners/Petitioner/Defendants

Vs.

Andal Ammal

.. Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed, under Article 227 of Constitution of India, to call for the documents pertaining to order in I.A.No.762 of 2015 in O.S.No.13 of 2012, dated 05.12.2015, passed by Learned Principal District Munsif Ambasamudram and quash the same and direct the Trial Court to appoint an advocate commissioner to narrate the physical features of plaint scheduled property for the apt adjudication of the matter.

For Petitioner : Mr.K.P.Narayanakumar

ORDER

The petitioners are the defendants, whereas the respondent is the plaintiff in the suit in O.S.No.13 of 2012.

2.The respondent filed the suit in O.S.No.13 of 2012 on the file of the District Munsif Court, Ambasamudram for declaration and injunction restraining the petitioners and others from interfering with her peaceful possession and enjoyment of the property. According to the petitioners, the suit property is common pathway which is used by the petitioners and other residents. Waterline, electricity line and respective poles were planted in the pathway and all the residents are being benefited by the same. The petitioner filed I.A.No.762 of 2015 for appointment of Advocate Commissioner to inspect the suit property and to note down the physical features of the suit property. The respondent resisted the same. The learned Judge after considering the facts and materials on record, dismissed the application filed by the petitioners. Against the order of dismissal, the present Civil Revision Petition has been filed.



3.The learned counsel for the petitioners submitted that the identification of the property and its nature can be decided only based on the report of the Advocate Commissioner. The learned Judge erred in holding that the petitioners have filed the application only to fill up the lacuna. Similarly, the finding of the learned Judge that the application is filed only for collection of evidence, is not correct. The learned Judge misunderstood their legal proposition with regard to appointment of Advocate Commissioner and on erroneous ground dismissed the application filed by the petitioners and prayed for allowing the Civil Revision Petition.

4.I have heard Mr.K.P.Narayanakumar, learned counsel appearing for the petitioners and also carefully perused the entire materials on record.

5.The respondent is seeking the relief of declaration and injunction in the suit. It is for the respondent to prove her case by documentary and oral evidence. The respondent let in oral and documentary evidence to prove her case. The petitioners also examined the witnesses and suit is posted for further evidence on behalf of the petitioners. At this stage, the petitioners filed petition for appointment of Advocate Commissioner. The learned Judge has considered all the materials on record and has correctly dismissed the application holding that it is for the respondent to prove the case and the petitioners cannot be allowed to gather evidence to prove their case. The learned Judge exercised the power in proper perspective and there is no irregularity in the said order warranting interference by this Court.

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

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

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To

The Principal District Munsif, Ambasamudram.

+1CC to Mr.K.P.Narayanakumar Advocate Sr.No.7724

GJM/SKS/RR/8.3.16-2p-3C

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