



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2016

CORAM

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) .No.454 of 2016(PD)

and

C.M.P. (MD) No.1965 of 2016

1.Samueal Raj Nadar

2.Gnanam

... Petitioners

Vs.

1.P.Gurusamy

2.D.Kovil Pichai

3.A.Sakthivel

4.M.Dharmalingam

... Respondents

Prayer:-Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 30.09.2015 passed in I.A.No.433 of 2009 in O.S.No.169 of 2009 on the file of the Principal District Munsif, Valliyoor.

For Petitioners

:Mr.S.Subbiah

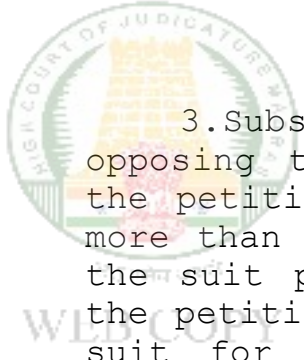
For Respondents

:Mr.H.Arumugam

ORDER

This Civil Revision Petition has been filed to set aside the order dated 30.09.2015 passed in I.A.No.433 of 2009 in O.S.No.169 of 2009 on the file of the Principal District Munsif, Valliyoor.

2.The petitioners are the plaintiffs and filed a suit in O.S.No.169 of 2009 for a decree of permanent injunction against the respondents, their men, agents from encroaching or occupying the suit schedule property. The petitioners also filed an application in I.A.No.433 of 2009 for appointment of an Advocate Commissioner to inspect the suit property with the help of a surveyor and to note down the physical features. The Advocate Commissioner was appointed, exparte by order dated 18.06.2009. The Advocate Commissioner inspected the suit property. At that time, the respondents filed C.R.P(MD).No.2733 of 2012 challenging the order dated 18.06.2009. This Court by order dated 13.11.2014 allowed the C.R.P and remitted the matter back to the lower Court to dispose of the application on merits within a period of four weeks from the date of receipt of a copy of this order.



3. Subsequently, the respondents filed counter affidavit opposing the appointment of Advocate Commissioner. According to the petitioners, they are in possession of the suit property for more than 150 years and church and Karunia Illam are situated in the suit property. The respondents are trying to interfere with the petitioners possession and therefore, the petitioners filed a suit for permanent injunction restraining the respondents and their men from encroaching or occupying the suit schedule property.

4. The respondents contended that the suit property is in Natham Porampoke land. The petitioner has constructed St. Andrews Church in 3 ½ cents and Karunia Illam in ½ cents. Subsequently, they demolished and constructed new church by encroaching 15 cents of porampoke land and put up a compound wall. The respondents are not interfering with the land in possession of the petitioners inside the compound wall, as they are using the land outside the compound wall. The suit is for bare injunction and therefore, the intention of the petitioner is only to collect the evidence.

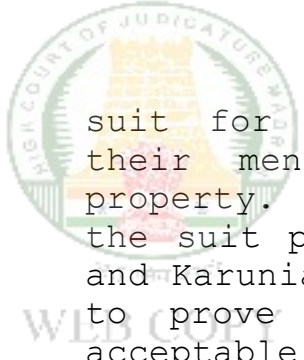
5. The learned Judge considered all the facts and materials on records and dismissed the application. Against which, the present Civil Revision Petition is filed.

6. The learned counsel for the petitioners contended that the learned Judge did not properly consider the provision under Order 26 Rule 10-A C.P.C., for appointment of an Advocate Commissioner. The learned Judge failed to consider the relief sought for by the petitioners in the suit. The learned Judge erroneously held that the petitioners are trying to collect the evidence to prove their case. The learned Judge erred in holding that the petitioners must prove their case by oral and documentary evidence and appointment of an Advocate Commissioner and his report are not necessary to prove the case of the petitioners.

7. The learned counsel for the caveator submitted that the suit is for bare injunction on the ground that the petitioners are in possession and enjoyment of the property and the respondents are trying to interfere with the possession and enjoyment of the property. The petitioners have to prove their possession by oral and documentary evidence only. In view of the nature of claim of the petitioners the application for appointment of an Advocate Commissioner to inspect the suit property and to measure the same with the held of a surveyor, is unnecessary. The learned Judge has given valid reasons for dismissing the application.

8. I have heard Mr. S. Subbiah, learned counsel appearing for the petitioners and Mr. H. Arumugam, learned counsel appearing for the respondents and carefully perused the entire materials on record.

9. From the materials, it is seen that the petitioners filed a



suit for permanent injunction restraining the respondents and their men from encroaching or occupying the suit schedule property. According to the petitioners they are in possession of the suit property for more than 150 years and constructed church and Karunia Illam. In the circumstances, it is for the petitioners to prove their possession and enjoyment of the property by acceptable oral and documentary evidence. It is pertinent to note that the respondents have stated that the petitioners had put up a compound wall encroaching 15 cents in the written statement. The respondents have stated that they are not interfering with the petitioners possession inside the compound wall and the same was recorded by the Peace Committee Meeting conducted before the Tahsildar. The respondents signed the Peace Committee Meeting. The petitioners did not sign the Peace Committee Meeting.

10. In view of the above, it is for the petitioners to prove their case by oral and documentary evidence with regard to the possession of the respondents.

11. The learned Judge has considered the relief sought for by the petitioners and all the materials on record, dismissed the application. There is no error or illegality in the said order.

12. In the result, the civil revision petition is disposed of. No costs. Consequently, the connected C.M.P is also closed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

The Principal District Munsif, Valliyoor.

+one cc to M/s.H.Arumugam, Advocate in SR.No.13919/16

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CSL/SKS-RR/03.05.2016 : 3p/3c

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