

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2017

CORAM

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

CRP (PD) No.1253 of 2017
and CMP.No.5884 of 2017

N.Raju (Died)

1.Bymi

2.R.Karthi

3.Rathna

4.Vijaya Kumar

5.Saraswathy

6.Ramya

.. Petitioners

(Cause title accepted vide order dated 01.03.2017

made in CMP.No.3560 of 2017 in CRP.PD.SR.No.15040 of 2017

Vs

R.Selvakumar

.. Respondent

Prayer:- Civil Revision Petition filed under Section 227 of the Constitution of India, against the fair and final order dated 07.12.2016 passed by the learned District Munsif, Kotagiri, The Nilgiris in I.A.No.200/2016 in O.S.No.17/2014 and prays to set aside the same.

For Petitioner : Ms.L.Mouli

ORDER

The revision petitioners have filed this revision, praying to set aside the fair and final order dated 07.12.2016 passed in I.A.No.200/2016 in O.S.No.17/2014, by the learned District Munsif, Kotagiri, The Nilgiris.

2. The revision petitioners are the defendants 2 to 5 in

O.S.No.17 of 2014 on the file of District Munsif Court, Kotagiri. The respondent, as plaintiff, filed a suit for declaration of title, delivery of vacant possession and for permanent injunction.

3. According to the petitioners/defendants, the survey number given by the respondent/plaintiff in the plaint is imaginary and it is not correct. Even the boundaries mentioned in the plaint is also not correct. The petitioners disputing that the survey number of the suit property is only imaginary, filed an application in I.A.No.200 of 2016 under Order XXVI, Rule 9 seeking to appoint an Advocate Commissioner to measure the suit property to find out whether the Door No.45/94C is in S.No.1024/10 of Kotagiri Village.

3.1 The fifth defendant in his written statement has also contended that they are not the permissive occupant of the suit property and that his grandfather Nachimuthu was in possession of the suit land before 1960 and subsequently, he constructed suit building in the year 1962 and was in continuous possession. After the demise of Nachimuthu, his legal heirs and the defendants are in peaceful possession of the property.

4. The other contention raised by the revision petitioners is that the respondent/plaintiff did not object to and no counter was filed by him in allowing the said application in I.A.No.200 of 2016.

5. The learned trial Court in its order dated 07.12.2016, had held that the deciding issue in this case is whether the defendants are the permissive occupier of the suit property or they are entitled to the suit property through an adverse possession. In such a case, the survey number is not a deciding factor of this issue and it is only to decide whether the door no.49/94C belongs to the plaintiff or the defendants. Hence, the learned Judge dismissed the application, on the ground there is no necessity to appoint an Advocate Commissioner to measure the suit property. Challenging the order of dismissal, the petitioners/defendants are before this Court in this Civil Revision Petition.

6. Heard the learned counsel appearing for the petitioners. The learned counsel for the petitioners submitted that the respondent/plaintiff is not the absolute owner of the suit property. He also contended that since the survey number and boundaries given in the plaint is only imaginary, the said issue can be decided only if an Advocate Commissioner is appointed to measure the property. Though no counter was filed by the respondent opposing to appoint an advocate commissioner, the learned Judge has dismissed the application to appoint an Advocate Commissioner is unfair and hence the said order should be set aside.

7. This Court has held that since the respondent/plaintiff has filed a suit for declaration of title in respect of suit property and for recovery of possession and injunction, it is for the respondent/plaintiff to

prove the title of the property with regard to door number, survey number and boundaries mentioned in the plaint. The learned trial Judge has appreciated all these facts and dismissed the application by giving cogent and valid reasons.

8. This Court does not find any irregularity or illegality in the order passed by learned trial Judge warranting interference by exercising the revisional jurisdiction under Article 227 of the Constitution of India.

9. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

05.04.2017

ds

To:

The District Munsif,
Kotagiri, The Nilgiris.

V.M.VELUMANI,J

ds

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