

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.No.1451 of 2017

and

C.M.P.No.6752 of 2017

C.Govindasamy (died)

C.Veerappa Reddy (died)

C.Kanniappa Reddy (died)

1.K.Chandra

2.K.Saravanan

3.K.Rose

Lakshmi (died)

W/o.Late Govindasamy Reddy

4.Jothi

5.Suseela

6.Nagammal

7.Sudhakaran

... Petitioners/Plaintiffs

Vs.

Dr.N.Jayaprakash

Respondent/Defendant

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 27.09.2016 passed in I.A.No.365 of 2016 in O.S.No.63 of 2013 on the file of the Subordinate Judge, Poonamallee.

For Petitioner : Mr.G.Dilip Kumar

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 27.09.2016 made in I.A.No.162 of 2017 in O.S.No.63 of 2013 on the file of the Subordinate Court, Poonamallee.

2. The petitioners are the plaintiffs and the respondent is the defendant in O.S.No.63 of 2013. The petitioners filed a suit for permanent injunction restraining the respondent, his men, agents and servants, from interfering with the petitioners peaceful possession of the suit land and thereby evicting them, except by due process of law. The respondent filed a written statement on 17.03.2015 and the respondent also filed additional written statement during September, 2015 and is contesting the suit. The petitioners filed I.A.No.365 of 2016 for appointment of an Advocate Commissioner to inspect the suit property, to note down the physical features like the standing crops, fence and other physical features of the suit property that may be pointed out at the time of inspection and submit a detailed report and plan.

3. The respondent filed counter affidavit and opposed the said application stating that the petitioners are never in possession of the suit property and they have not raised any crops and put up fencing and that the respondent is in possession and the petitioners have filed the suit for permanent injunction and it is for them to prove their possession by let in oral and documentary evidence.

4. Learned Judge, considering the averments made in the affidavit, counter affidavit and the materials available on record, dismissed the application holding that the application filed after three years of filing of the suit and the Court cannot be made as a party to collect the evidence.

5. As against the order of dismissal by the trial Court, the petitioners have come out with the present Civil Revision Petition.

6. Heard the learned counsel for the petitioners and perused the materials available on record.

7. It is seen that earlier the respondent filed the suit in O.S.No.80 of 2009 on the file of the Subordinate Court, Poonamallee seeking declaration. Pending the said suit, the petitioners herein filed the above suit in O.S.No.63 of 2013 for permanent injunction on the ground that they are in possession and enjoyment of the suit property having raised the greens and cultivating the property and put up the fence in the

entire suit property. They apprehended that the respondent would destroy the crops and fence put up by them and claimed that they are in possession and enjoyment of the property. It is seen from the counter filed by the respondent that the respondent has stated that he is in possession and enjoyment of the suit property and the petitioners were not in the possession of the suit property.

8.It is well settled that in the suit for injunction, it is for the parties to prove their possession and substantiate their claim by letting in evidence. It is also well settled that the Advocate Commissioner cannot be appointed for collecting evidence on behalf of one of the parties.

9. In view of the settled proposition of law, this Court is of the view that there is no illegality or irregularity warranting interference by this Court with the order dated 27.09.2016 passed by the learned Subordinate Judge, Poonamallee.

10 .In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To
The Subordinate Judge,
Poonamallee.

+1cc to Mr.G.Dilipkumar,Advocate sr.23948

C.R.P.No.1451 of 2017 and
C.M.P.No.6752 of 2017

lrs(co)
ss(21/6/2017)

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