

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1588 of 2017
& C.M.P.No.7499 of 2017

1.R.Annapoorani Ammal
2.R.Rajasekar
3.R.Amirthalingam

.. Petitioners

Vs.

1.T.V.Sivakumar
2.V.Selvarani

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 16.02.2017 made in I.A.No.18 of 2017 in O.S.No.179 of 2013 on the file of the learned Principal District Munsif Court, Cuddalore.

For Petitioner : Mr.R.Nasodullah for
Mr.R.Gururaj

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 16.02.2017 made in I.A.No.18 of 2017 in

O.S.No.179 of 2013 on the file of the learned Principal District Munsif Court, Cuddalore.

2. The petitioners and the second respondent are the defendants and first respondent is the plaintiff in O.S.No.179 of 2013. The first respondent filed the suit for declaring the plaintiff's title in respect of the suit properties shown as 1 to 3 in the suit and also for injunction restraining the petitioner and 2nd respondent from disturbing the first respondent's peaceful possession of the suit property. The petitioners filed written statement on 30.01.2014 and are contesting the suit. The trial commenced and P.W.1 was examined. At that stage, the petitioners filed an application in I.A.No.18 of 2017 for appointment of an Advocate Commissioner to inspect the suit property, note down the physical features and file a report and plan. According to the petitioners, there are more than 50 cashew trees in the suit property and they are residing there.

3. The first respondent filed counter and opposed the same and stated that there are only few trees in the suit property. The first respondent is in possession and enjoyment of the suit

property. The petitioners cannot seek for appointment of Advocate Commissioner to ascertain the number of trees in the suit property and whether they are in possession and enjoyment of the suit property. They must prove the same by letting in oral and documentary evidence.

4. The learned Judge considering the averments made in the affidavit, counter affidavit, materials available on record and judgment of this Court, dismissed the application holding that the parties must prove their possession by letting in oral and documentary evidence and the Advocate Commissioner cannot be appointed to find out as to who is in possession of the suit property.

5. Against the order of dismissal dated 16.02.2017 made in I.A.No.18 of 2017, the present civil revision petition is preferred by the defendants 1 to 3/petitioners.

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

7. From the materials available on record, it is seen that the intention of the petitioners is to collect evidence on their behalf to

prove that they are in possession of the suit property.

8. This Court as well as the Honourable Apex Court in number of cases held that the Advocate Commissioner cannot be appointed to collect evidence on behalf of one party and in respect of the suit property to find out who is in possession. The learned Judge considering these facts dismissed the application by giving cogent and valid reasons. There is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 16.02.2017.

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

28.04.2017

Index : Yes

dm/kj

To

The Principal District Munsif,
Cuddalore.

V.M.VELUMANI, J.

dm/kj

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