

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1761 of 2017
& C.M.P.No.8299 of 2017

1.G.Sugantha
2.Sellammal
3.Raju
4.Manickam
5.Dhanabakkiyam
6.Govindaraj
7.Vengalam
8.Rajeswari

.. Petitioners

Vs.

1.Rajamani
2.Muthammal

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order passed in I.A.No.1252 of 2016 in I.A.No.1727 of 2012 in O.S.No.1225 of 2012, on the file of the Principal District Munsif Court, Salem, dated 07.02.2017 and to set-aside the same.

For Petitioner : Mr.S.Gunalan

ORDER

This Civil Revision Petition has been filed against the order fair and decreetal order passed in I.A.No.1252 of 2016 in I.A.No.1727 of 2012 in O.S.No.1225 of 2012, on the file of the Principal District Munsif Court, Salem, dated 07.02.2017.

2. The petitioners are the defendants 1 to 8 and the respondents 1 and 2 are the plaintiffs in O.S.No.1225 of 2012. The respondents 1 and 2 filed the suit for declaration, to declare that the suit property is a highway public road and panchayat road and for permanent injunction, restraining the petitioners from alienating or encroaching the suit property or altering the physical features. The respondents 1 and 2 filed I.A.No.1727 of 2012 for appointment of an Advocate Commissioner to note down the physical feature and measure the petition mentioned property with metes and bounds with qualified surveyor and file a report. By the order, dated 31.03.2015, an Advocate Commissioner was appointed. The petitioners filed I.A.No.1252 of 2016, to set-aside the ex-parte order for appointment of Advocate Commissioner. The sixth petitioner filed an affidavit for herself and for other petitioners and

submitted that he was looking after the case and his son underwent heart surgery, he was taking care of his son and subsequently, sixth petitioner was suffering from jaundice and was taking native treatment. The petitioners also stated that already they filed O.S.No.566 of 2012, on the file of the Additional District Munsif Court, Salem and obtained interim order. In view of the same, the application for appointment of Advocate Commissioner is not maintainable.

3. The respondents filed a counter affidavit and opposed the said contention and submitted that the property in question is a highway public road and the petitioners have encroached public road. After the order of appointing the Advocate Commissioner, the Advocate Commissioner issued a notice to the parties and inspected the suit property. At the time, the petitioners and their men attacked the Government Officials and Advocate Commissioner and abused them in filthy language. The respondents are not aware of the suit alleged to have been filed by the petitioners.

4. The learned Judge, considering the averments made in the affidavit, counter affidavit and materials available on record,

dismissed the application, holding that O.S.No.566 of 2002, is nothing to do with the present suit, the petitioners have filed an application to set-aside the ex-parte order appointing Advocate Commissioner, after one year.

5. Against the order dated 07.02.2017 made in I.A.No.1252 of 2016 in I.A.No.1727 of 2012 in O.S.No.1225 of 2012, the present civil revision petition is filed by the petitioners / defendants.

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

7. The grievance of the petitioners in the civil revision petition is that already they filed O.S.No.566 of 2002 and obtained injunction and due to heart surgery to the son of the sixth petitioner and she was suffering from jaundice, the petitioner could not file the application earlier. These contentions are devoid of merits. There are eight petitioners and they have not taken immediate steps to set-aside the order of appointing Advocate Commissioner. The reason given by the petitioners for the delay is not a valid reason.

8. From the materials available on record, it is seen that the Advocate Commissioner already inspected the property along with the Government officials, but petitioners and their men attacked the Government Officials and Commissioners and abused them in filthy language. In such circumstances, the application to set-aside the order of appointment of Advocate Commissioner cannot be entertained and is devoid of merits. In these circumstances, there is no illegality and or irregularity in the order passed by the trial Court, dated 07.02.2017, warranting interference by this Court.

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

06.06.2017

Index : Yes/No

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V.M.VELUMANI, J.

r n s

To

The Principal District Munsif Court,
Salem,

C.R.P.(PD)No.1761 of 2017
& C.M.P.No.8299 of 2017

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