

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2017

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.R.P (PD).No.1934 of 2014
and M.P.No.1 of 2014

1.Valarmathi

2.B.Ramu

... Petitioners

Vs.

1.K.Sudhakar

2.K.Subramaniyam Naidu

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 03.03.2014 passed in I.A.No.464 of 2013 in O.S.No.131 of 2013 on the file of the Principal District Munsif Court, Poonamallee.

For Petitioners : Mr.V.Manohar

For Respondents : no appearance

ORDER

The revision petitioners are the defendants in the suit filed in O.S.No.131 of 2013. The respondents/plaintiffs filed the suit for permanent injunction

2. During the pendency of the suit, the respondents filed an application seeking for appointment of an Advocate Commissioner. The reasons set out in the accompanying affidavit filed in support of the application is that the respondents want to ascertain whether the 2nd defendant in the suit is running "Valarmathi Milk Depot" in the part of the suit premises as stated by him and also to ascertain whether the 2nd defendant is running "Aavin Palagam" at Avadi-Poonamallee Road, Soundhar Complex (Near Chinna Amman Temple), Avadi, Chennai - 600 054. The trial Court allowed the petition partly appointing an Advocate Commissioner and issued a direction to inspect the suit property and submitted a report.

3. The learned counsel appearing for the petitioners contended that the suit is for permanent injunction and the application seeking for appointment of an Advocate Commissioner is filed to find out the details regarding the possession of the 2nd respondent, which can never be done. The possession has to be established and proved by the respective parties to the suit and the Court cannot assist either parties to get the proof regarding the possession, more specifically through an Advocate Commissioner.

4. It is a clear case where the trial Court has committed an error in appointing an Advocate Commissioner, when in the accompanying affidavit

of the petition itself it is stated that they want to ascertain the possession of the 2nd defendant. The Advocate Commissioner cannot be appointed for making an enquiry regarding the factum of possession. This principle was well settled by the Hon'ble Apex Court and also by this Court. The factum regarding the possession has to be proved by the respective parties and the Court cannot be used as an instrument to collect evidence in respect of the possession of either of the parties in the suit.

5. Accordingly, the order passed in I.A.No.464 of 2013 dated 03.03.2014 is infirm and consequently, the fair and decretal order passed in I.A.No.464 of 2013 in O.S.No.131 of 2013 are set aside. In result, the Civil Revision Petition in C.R.P.(PD).No.1934 of 2014 is allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Index : Yes
Internet : Yes
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24.02.2017

To

The Principal District Munsif Court,
Poonamallee.

S.M.SUBRAMANIAM , J.

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