

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1980 of 2017
& C.M.P.No.9586 of 2017

1.Kittappa @ Govindaraj

2.Kili (alias) Thambiyappan

.. Petitioners

Vs.

1.Selvanathan

2.Ganapathi Pillai

3.Vasuki

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 19.04.2017 made in I.A.No.304 of 2017 in O.S.No.15 of 2008 on the file of the District Munsif, Nagapattinam, Nagapattinam District.

For Petitioner : Mr.S.Vijayakumar

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 19.04.2017 made in I.A.No.304 of 2017 in O.S.No.15 of 2008 on the file of the learned District Munsif, Nagapattinam,

Nagapattinam District.

2. The petitioners are the defendants and the respondents are the plaintiffs in O.S.No.15 of 2008. The respondents have filed the suit for injunction. The petitioners have filed written statement on 10.06.2009 and are contesting the suit. Trial commenced. The respondents let in evidence and closed their side. The petitioners filed proof affidavit and examined D.W.1 and marked documents.

3. At that time, the petitioners filed I.A.No.304 of 2017 for appointment of an Advocate Commissioner to inspect the suit property and to file a report. According to the petitioners, the respondents handed over the possession to the petitioners. The petitioners are carrying on brawn culture in the suit property and spent huge amount for purchasing various equipments. The respondents suppressed the fact filed a suit to harass the petitioners. P.W.1 gave contradictory evidence with regard to the suit property. In view of the same, appointment of Advocate Commissioner is necessary to note down the physical features.

4. The respondents have filed counter denying the averments made in the application stating that originally the suit was decreed and on appeal

filed by the petitioners, suit was remanded for fresh trial on the direction to dispose the suit within three months. After completion of evidence by the respondents and marking of documents through D.W.1, the petitioners have come out with the present application, for appointment of an Advocate Commissioner to prove his possession, only to drag on the proceedings and prays for dismissal of the application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and the materials available on record, dismissed the application holding that the relief sought for in the suit is for permanent injunction and it is for the respondents to prove their possession and the petitioners have filed the present application only to drag on the proceedings and in the application the petitioners have not specified any reasonable ground for appointment of an Advocate Commissioner.

6. Against the order of dismissal dated 19.04.2017, the present civil revision petition is filed by the petitioners.

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

8. Admittedly, this suit filed by the respondents is for permanent injunction. The respondents have come out with the specific case that they are in possession of the suit property and the petitioners are disturbing the same. It is for the respondents to prove their possession by letting in acceptable evidence and obtain a decree for permanent injunction. It is well settled that in a suit for permanent injunction, an Advocate Commissioner need not be appointed to note down the physical features and that an Advocate Commissioner cannot be appointed to find out, who is in possession of the property.

9. In view of the above circumstances, this Civil Revision Petition is devoid of merits and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.06.2017

Index : Yes

vsm

To

The District Munsif Court,
Nagapattinam, Nagapattinam District.

V.M.VELUMANI, J.

vsm

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