

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No. 3725 of 2017

and

C.M.P.No.17293 of 2017

1. M.Sundari
2. M.Murugesan
3. M.Ganapathi

.. Petitioners

Vs

1. K.Ashok Kumar
2. Dr.P.Gayathri

.. Respondents

PRAYER: Civil Revision Petition filed under Section 151 of Civil Procedure Code, against the fair and decreetal order dated 19.06.2017 passed by the XVIII Assistant Judge, City Civil Court, Chennai, in I.A.No.7508 of 2017 in O.S.No.828 of 2014.

For Petitioners : Mr. P. Vijendran

ORDER

This Civil Revision Petition arises against the fair and decreetal order dated 19.06.2017 passed by the XVIII Assistant Judge, City Civil

Court, Chennai, in I.A.No.7508 of 2017 in O.S.No.828 of 2014.

2. The petitioners filed a suit in O.S. No. 828 of 2014 for permanent injunction against the respondents. In the said suit, the petitioner also filed an application in I.A. No.13854 of 2015, under Order 1 Rule 10(2) of Civil Procedure Code, to implead Mrs. Siyathammal as a party in the said suit. After hearing both the parties, the said application was dismissed by the trial court. Challenging the said order, the petitioners filed C.R.P.(PD) No.1039 of 2017 and this Court by order dated 17.03.2017 dismissed the revision. Pursuant to the order of this Court, the petitioners filed another I.A. No. 7508 of 2017 before the trial court under Order 16 Rule 1(2) r/w 151 of CPC and sought to examine the said Siyathammal as a witness in the said suit. The court below dismissed the said application, without appreciating the contention of the petitioners. Hence, the present revision petition has been filed.

WEB COPY

3. The learned counsel for the petitioner would submit that the petitioners claim the suit property on the basis of the sale deed executed by the said Siyathammal, in favour of the 1st petitioner's husband. Hence, the aforesaid person has to be examined as a witness in

the said suit and so the order passed by the trial court is liable to be set aside.

4. On perusal of the records, it is seen that the petitioner has filed the suit for permanent injunction against the respondents/ defendants 1 and 2. Pending the suit, the petitioners have filed an application in I.A. No. 13854/2015 under Order 1 Rule 10(2) of CPC to implead their vendor Siyathammal, as a party respondent in the said suit. The said application was dismissed on 31.01.2017. Challenging the said order, the petitioners filed C.R.P No. 1039/2017 before this Court. The said revision petition was also dismissed on 17.03.2017. Again, an application in I.A. No. 7508 of 2017, under Order 16 Rule 1(2) r/w 151 of CPC has been filed to examine the said Siyathammal, as a witness. The relief sought for in the suit is, for permanent injunction against the respondents/ defendants and the respondents have filed their written statement and had disputed the title of the suit property.

5. It is an admitted fact that the present suit has been filed on the basis of the possession in the suit property. It is for the petitioner to establish before the court below, on the basis of the documentary

evidences to prove that the petitioners are in possession of the suit property. Hence, the court below has rightly rejected the application filed by the petitioners to examine Siyathammal as a witness. Therefore, there is no warrant to interfere with the order passed by the court below.

6. Therefore, the Civil Revision Petition fails and the same is dismissed. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

23.10.2017

Index: Yes/ No

avr

To

The XVIII Assistant Judge,
City Civil Court, Chennai.

WEB COPY

D. KRISHNAKUMAR J.,

avr



CRP (PD) No. 3725 of 2017
and
C.M.P.No.17293 of 2017

23.10.2017

WEB COPY