

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(PD).No.806 of 2017
and C.M.P.No.3973 of 2017

1.A.Ravichandran

2.G.Babu

represented by their Power Agent

S.Jambu

... Petitioners

Vs.

R.Sridhar

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order passed by the Principal District Munsif, Poonamallee in I.A.No.1191 of 2016 in O.S.No.393 of 2016 dated 19.12.2016.

For Petitioners : Mr.M.R.Jothimanian
for M/s.K.Balu

For Respondent : Mr.A.K.Kumarasamy, Senior Counsel
for M/s.R.Sunil Kumar

ORDER

Challenging the fair and final order passed in I.A.No.1191 of 2016 in O.S.No.393 of 2016 on the file of the Principal District Munsif Court, Poonamallee, the plaintiffs have filed the above Civil Revision Petition.

2.The plaintiffs filed the suit in O.S.No.393 of 2016 for permanent injunction. Subsequently, the defendant took out an application in I.A.No.1191 of 2016 seeking for appointment of Advocate Commissioner since the identity of the property is in dispute. The plaintiffs filed their counter and opposed the petition stating that there is no necessity for appointing an Advocate Commissioner and that the Surveyor's report and Commissioner's report will not help to decide the issue in a suit for bare injunction. The trial Court, taking into consideration the case of both parties, allowed the application and appointed an Advocate Commissioner in a suit for bare injunction.

3.The issue that has to be decided is with regard to the possession of the parties. It is also settled position that the burden of proof lies on the plaintiffs and the plaintiffs have to establish their case by adducing oral and documentary evidences. In the case on hand, the plaintiffs have stated that there is no necessity for appointing an Advocate Commissioner to identify the suit property. Since the burden of proof lies on the plaintiffs to establish their case, they should discharge the burden of proof by adducing proper evidence.

4.Mr.A.K.Kumarasamy, learned senior counsel appearing for the respondent/caveator submitted that since there is dispute with regard to the identity of the property, the trial Court had rightly allowed the application.

5.The learned senior counsel also relied upon a judgment of this Court in *Sivagurunathan Vs. Ramalingam and Others* reported in **(2005) 3 M.L.J. 525**, wherein this Court held that when the location of the plaintiff's property and the extent is denied, the Commissioner ought to have been appointed for effectively adjudicating the dispute.

6.In the case on hand, the plaintiffs have stated that there is no dispute with regard to the identity of the property. Further, in paragraph-3 of the counter they have stated that the Survey Number cannot be sub divided and that even in the year 1986, the Survey Numbers were sub divided, therefore, it is not possible to again sub divide the Survey Number.

7.In these circumstances, the judgment relied upon by the learned senior counsel for the respondent is not applicable to the present case.

8.As already stated, since the burden of proof lies on the plaintiffs, they have to establish their case by adducing proper oral and documentary evidenced. The parties cannot collect evidence through the Advocate Commissioner to identify their properties. In these circumstances, I am of the considered view that the trial Court should not have allowed the application seeking for appointment of an Advocate Commissioner.

9.In these circumstances, the fair and decreetal order passed in I.A.No.1191 of 2016 are liable to be set aside and accordingly, the same are set aside. The Civil Revision Petition stands allowed.

10.The learned senior counsel appearing for the respondent/defendant submitted that the trial Court may be directed to dispose of the suit within a time frame.

11.In view of the submission made by the learned senior counsel appearing for the respondent, I direct the Principal District Munsif, Poonamallee to dispose of the suit in O.S.No.393 of 2016 on merits and in accordance with law within a period of six months from the date of receipt

of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

07.03.2017

To

The Principal District Munsif,
Poonamallee.

M.DURAISWAMY,J.
va

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