

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.810 of 2017
and C.M.P.No.3977 of 2017

Syed Hasina Beevi

... Petitioner

Vs.

Kannadasan (Died)

1.Bakkiavathi @ Bakkiam

2.Jayalakshmi

3.Umamaheswari

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 25.11.2016 passed by the District Munsif, Nagapattinam in I.A.No.1154 of 2015 in O.S.No.52 of 2013.

For Petitioner : Mr.Abu Thalha

ORDER

Challenging the fair and final order passed in I.A.No.1154 of 2015 in O.S.No.52 of 2013 on the file of the District Munsif, Nagapattinam, the 1st defendant has filed the above Civil Revision Petition.

2.The plaintiff filed the suit in O.S.No.52 of 2013 for permanent injunction.

3.The defendants filed their written statement and are contesting the suit. Subsequently, the defendants took out an application in I.A.No.1154 of 2015 seeking for appointment of an Advocate Commissioner. The application filed by the 1st defendant was contested by the plaintiffs stating that there is no necessity for appointing an Advocate Commissioner.

4.Admittedly, the suit has been filed by the plaintiffs for permanent injunction. It is settled position that the plaintiffs have to establish their case by adducing oral and documentary evidences and a party cannot collect evidence through an Advocate Commissioner. When the burden of proof lies on the plaintiffs, the application filed by the 1st defendant seeking for appointment of an Advocate Commissioner, that too, when the suit was posted for arguments, is unnecessary. The plaintiffs having let in oral and documentary evidences, the trial Court can decide the suit based on the available oral and documentary evidences. If the 1st defendant is really interested in filing an application to appoint an Advocate Commissioner, he should have filed the same at the earliest point of time and should not have waited till the suit is taken up for arguments.

5.The learned counsel appearing for the petitioner relied upon the following judgments: **2014 (5) CTC 85 [Anwar Batcha and another Vs.**

S.Mahuedoom]; 2015-5-L.W. 691 [*Sakthivel Vs. Govindammal & another*] and 2016-1-L.W. 159 [*Nallamma Naidu Vs. Paul Pandian & another*].

6.The judgments relied upon by the learned counsel for the petitioner are all on different facts and circumstances and therefore, the judgments relied upon by the learned counsel for the petitioner are not applicable to the present case.

7.In these circumstances, I am of the considered view that the trial Court has rightly dismissed the petition. I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Index : No
Internet : Yes
va

07.03.2017

To

The District Munsif,
Nagapattinam.

M.DURAIWAMY,J.
va

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