

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.01.2017

Coram

The Honourable MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.No.205 of 2015

and

M.P.No.1 of 2015

1. Ganesan
2. Muniyammal
3. Manoharan
4. Venkatesan
5. Moorthy
6. Sivalingam

... Petitioners

vs.

Margabandhu

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 09.10.2014 passed by the learned District Munsif at Katpadi, Vellore District in I.A.No.172 of 2014 in O.S.No.106 of 2012.

For Petitioners : Mr.N.S.Amarnath
For Respondents : Served-No appearance

ORDER

The defendants 3, 6 and 7 to 10, who are aggrieved by the order passed by the Court below in rejecting the application filed

under Order 26 Rule 9 r/w Section 151 of the Code of Civil Procedure for appointment of an Advocate Commissioner to inspect the suit property on the basis of the document at the relevant point of time, with the help of a Surveyor and to file a report, has filed this revision.

2. Heard the learned counsel for the revision petitioners and despite service of notice, none appeared for the respondent, either in person or through the counsel.

3. The respondent/plaintiff herein filed a suit before the Court below seeking permanent injunction restraining the defendants from interfering with his peaceful possession and also for a mandatory injunction directing the 12th defendant to cancel the patta issued in Patta No.409.

4. It is contended by the revision petitioners that the suit has been filed by the respondent with wrong measurements of the suit scheduled property, without mentioning the boundaries. Therefore, they have filed the above application seeking

appointment of Advocate Commissioner. However, the court below dismissed the same.

5. On a perusal of the typed set of papers, it is seen that the respondent has specifically stated in the Schedule appended to the plaint that the property in S.No.207 in Patta No.409 is the suit property. Hence, there is no dispute with respect to the identity of the property. Besides, in a suit for injunction, only the factum of possession has to be gone into. If the respondent fails to either identify the property or does not establish the possession, he will be non-suited. It is unnecessary for the revision petitioners to take up an application to appoint a Commissioner to demarcate the suit property.

6. Appointment of a Commissioner in a suit for injunction is only to gather evidence, which will not serve any purpose. If the Court feels that appointment of a Commissioner is necessary, it has always got a power to give direction accordingly.

PUSHPA SATHYANARAYANA.J

vj2

7. In view of the same, I do not find any perversity or illegality in the order passed by the court below in dismissing the application filed by the revision petitioners. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

12.01.2017

vj2

Index: Yes/No

Internet: yes

To

The District Munsif at Katpadi, Vellore District

C.R.P.PD.No.205 of 2015<http://www.judis.nic.in>