

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4972 of 2011
& M.P.No.1 of 2011

D.Arumugha Naicker (deceased)
Represented by Power Agent A.Babu

- 1.A.Krishnaveni
- 2.Rathinam
- 3.A.Babu
- 4.Vanaja
- 5.Vadivambal
- 6.Sarangan

(Petitioners 1 to 6 brought on record
as legal heirs of deceased petitioner
vide Order of Court dated 04.07.2017
by VMVJ made in M.P.No.3 of 2014
in CRP(PD)No.4972 of 2011)

.. Petitioners

Vs.

- 1.Balaraman (deceased)
- 2.Lingasami (deceased)
- 3.Devasagayam
- 4.Mary
- 5.Amudavalli
- 6.Arul
- 7.Sathya
- 8.Nagarathinam
- 9.K.Syamala
- 10.K.Rajalakshmi
- 11.B.Ramadoss
- 12.K.Rajasree
- 13.B.Thirumoorthy

.. Respondents

(RR3 to 7 brought on record as legal heirs of deceased 2nd respondent vide order of Court dated 04.07.2017 by VMVJ made in M.P.No.6 of 2014 in CRP.No.4972/2011)

(RR8 to 13 brought on record as legal heirs of deceased 1st respondent vide order of Court dated 04.07.2017 by VMVJ made in C.M.P.No. 4117 of 2017 in C.R.P.No.4972 of 2011)

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 21.09.2011 made in I.A.No.267 of 2011 in O.S.No.27 of 2011 on the file of the Subordinate Court, Tambaram.

For Petitioners : M/S.S.Gomathi Lakshmi for
Mr.M.Raja Sekhar
For R1 and R2 : Mr.V.Rajendran

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 21.09.2011 made in I.A.No.267 of 2011 in O.S.No.27 of 2011 on the file of the Subordinate Court, Tambaram.

2. The deceased petitioner namely, Arumugha Naicker is the plaintiff and the respondents 1 & 2 are the defendants in O.S.No.27

of 2011 on the file of the Subordinate Court, Tambaram. The deceased petitioner Arumuga Naicker filed O.S.No.27 of 2011 for permanent injunction against the respondents 1 and 2 restraining them from interfering with his peaceful possession and enjoyment of the suit property. According to the deceased petitioner, he is in possession and enjoyment of the suit property and respondents 1 and 2 without any right, tried to interfere with the suit property. The deceased petitioner filed I.A.No.140 of 2011 for interim injunction pending suit. The respondents 1 and 2 filed I.A.No.267 of 2011 under Order XXVI Rule 9 C.P.C. for appointment of an Advocate Commissioner along with taluk surveyor to inspect the suit property, measure the same, take photographs and to submit a report. Both the deceased petitioner and respondents 1 & 2 filed affidavit and counter affidavit and denied the title of others. Both the applications in I.A.No.140 of 2011 filed by the deceased petitioner and I.A.No.267 of 2011 filed by the respondents 1 and 2 were taken up together and by a common order dated 21.09.2011, the learned Judge allowed both the applications.

3. The deceased petitioner filed present Civil Revision Petition challenging the order of the learned Judge dated 21.09.2011 made

in I.A.No.267 of 2011 appointing Advocate Commissioner.

4. During pendency of the Civil Revision Petition, the plaintiff/petitioner Arumugha Naicker and respondents 1 & 2 died. The petitioners 1 to 6, who are the legal heirs of the deceased petitioner/plaintiff and respondents 3 to 7, who are the legal heirs of the deceased second respondent and respondents 8 to 13, who are the legal heirs of the deceased first respondent, were impleaded.

5. Heard the learned counsel for the petitioners as well as the respondents 1 and 2 and perused the materials available on record.

6. The deceased petitioner filed suit for permanent injunction against the respondents 1 and 2. In I.A.No.140 of 2011 filed by the deceased petitioner for interim injunction pending suit, interim injunction was granted. At the same time, the learned Judge allowed the application in I.A.No.267 of 2011 filed by the respondents 1 and 2 for appointment of Advocate Commissioner. The learned Judge appointed the Advocate Commissioner on the ground that the respondents 1 and 2 have disputed the description of the suit property. The learned Judge failed to see that the suit is for permanent injunction and it is for the petitioners to prove their

possession and enjoyment of the suit property.

7. It is well settled that in a suit for permanent injunction, there is no necessity for appointment of Advocate Commissioner. A party is not entitled to seek appointment of Advocate Commissioner to collect evidence on his behalf.

8. In the present case, the learned Judge has granted interim injunction to the petitioners in I.A.No.140 of 2011. By the common order passed allowing I.A.No.140 of 2011, the learned Judge appointing Advocate Commissioner in I.A.No.267 of 2011, failed to note the relief sought for by the petitioners and interim injunction granted in favour of the petitioners. By this failure, the learned Judge has committed an irregularity by appointing Advocate Commissioner.

9. For the above reason, the Civil Revision Petition is allowed by setting aside the order dated 21.09.2011 made in I.A.No.267 of 2011 in O.S.No.27 of 2011. No costs. Consequently, connected Miscellaneous Petition is closed.

13.12.2017

Index:Yes/No

kj

V.M.VELUMANI,J.

Kj

To

The Subordinate Judge, Tambaram.



C.R.P.(PD)No.4972 of 2011
& M.P.No.1 of 2011

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