

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2017

CORAM

The Hon'ble Mr.Justice K.K.Sasidharan

C.R.P.(PD)No.1748 of 2013

and

M.P.Nos.1 & 2 of 2013

1. Mani

2. Ayyandurai

...Petitioners

Vs.

Ganesan

... Respondent

Prayer

Civil Revision Petition, filed under Article 227 of the Constitution of India, with a prayer to call for records, pertaining to the order, dated 11.12.2012, made in I.A.No.1291 of 2012, in O.S.No.875 of 2011, on the file of the Principal District Munsif, Salem, and to set aside the same.

For Petitioners : Mr.T.S.Vijaya Raghavan

For Respondent : Mr.K.Selvaraj

ORDER

The petitioners filed an application before the learned Principal District Munsif, Salem, in I.A.No.1291 of 2012, for appointment of an Advocate Commissioner, in a suit filed by the respondent. The application was dismissed by the trial Court, on the ground that there is no need for a Commission in a suit for injunction. The said order is under challenge, in this Revision Petition, at the instance of the petitioners in I.A.No.1291 of 2012.

2. I have heard the learned counsel appearing on behalf of the petitioners. I have also heard the learned counsel for the respondent.

3. The suit in O.S.No.875 of 2011, was instituted by the respondent. It is a suit for injunction. The affidavit filed in support of the application in I.A.No.1291 of 2012, and the counter affidavit filed by the respondent, clearly indicates that there is a dispute with regard to the identity of the property. Though it is only a suit for injunction, there is *bona fide* dispute between the parties. In fact, the counter filed by the

respondent, in I.A.No.1291 of 2012, justifies the appointment of Commissioner. I am, therefore, of the view that the learned Principal District Munsif was not correct, in dismissing the application filed by the petitioners.

4. In the result, the Order, dated 11.12.2012 is set aside. The application, in I.A.No.1291 of 2012 is allowed.

5. The Civil Revision Petition is allowed, as indicated above. No costs. Consequently, connected Civil Miscellaneous Petitions are closed.

28.04.2017

sd

Index : Yes/No

To

The Principal District Munsif,
Salem.

K.K.Sasidharan,J.,

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