

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.06.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.3043 of 2013 and
M.P.No.1 of 2013

1.Venkittammal
2.Periya Muthan @ Rangasamy
3.Chinna Muthan @ Ramasamy

...Petitioners

Vs

1.N.Chikkannan
2.R.Easwaran
3.T.Ganesan
4.Bolan @ S.R.Nanjappan
5.The President
Komarapalaym Panchayat,
Komarapalayam Sathyamangalam Taluk,
Erode District.

6.The District Collector,
Erode District, Erode 11.

7.The Tahsildar,
Sathyamangalam Taluk,
Erode District.

...Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 19.02.2013 made in I.A.No.1145 of 2012 in O.S.No.229 of 2012 on the file of the District Munsif Court, Sathyamangalam.

For Petitioners : Mr.N.Manokaran

For Respondents : No appearance
ORDER

The petitioners filed a suit for declaration and consequential injunction against the respondents. The suit was laid with a contention that they are in adverse possession of the property.

2. Before the Trial Court, the petitioners filed an application in I.A.No.1145 of 2012 for appointment of Advocate Commissioner to note down the physical features of the property and to submit a report. The application was dismissed by the Trial Court with an observation that being a suit for declaration on the basis of adverse possession, it is for the petitioners to plead and prove that they are in possession of a particular item of the property. The said order is under challenge in this Civil Revision Petition.

3. The learned counsel for the petitioners contended that even in the counter affidavit filed by the 5th respondent, there was a statement that in case the property is measured, the dispute could be settled. The learned counsel further contended that in view of the consent given by the 5th respondent, the Trial Court was not correct in dismissing the application for the reasons found in the impugned order.

4. None appeared on behalf of the respondents.

5. The suit in question is a suit for declaration and consequential injunction. The petitioners are not claiming the property on the strength of their title. The plea is for a decree on the basis of adverse possession. Since the suit is one for adverse possession, it is the bounden duty of the petitioners to plead and prove that they are in open, adverse and hostile possession of a particular extent of property. There is no question of appointing an Advocate Commissioner to report about the property in the actual possession of the petitioners. The learned Trial Judge has given convincing reasons while rejecting the application filed by the petitioners. I do not find any error or illegality in the order warranting interference by exercising the revisional jurisdiction under Article 227 of the Constitution of India.

6. In the up shot, I dismiss the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed.

02.06.2017

svki

K.K.SASIDHARAN,J.

(svki)

To

District Munsif Court, Sathyamangalam.

C.R.P.(P.D.)No. 3043 of 2013

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