

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2017

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P.(PD)No.4471 of 2013  
and M.P.No.1 of 2013

1.B.N.Sridharamurthy

B.N.Suryanarayanaiah(died)

2.B.V.Nanjundaiah

3.Leela

4.Padma

5.B.V.Ramanath

6.Shantha

7.Lakshmi

8.B.V.Srinivasamurthy

.. Petitioners

Vs.

Mohamaed Ayub Shaib (died)

1.Mohamed Ishaq

2.A.Mohammed Saleha

3.A.Mohammed Ismail

4.A.Rizwana Begum

5.A.Rehana Begum

6.A.Mohammed Imthiyaz

7.A.Mohammed Hayathuzama

8.A.Mohammed Khalkuzama

9.A.Mohammed Khizar

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated

03.07.2013 made in I.A.No.110 of 2013 in O.S.No.109 of 2000 on the file of the learned District Munsif cum Judicial Magistrate No.1, Hosur.

For Petitioners : Mr.V.Nicholas

For Respondents : Mr.V.Raghavachari

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 03.07.2013 made in I.A.No.110 of 2013 in O.S.No.109 of 2000 on the file of the learned District Munsif cum Judicial Magistrate No.1, Hosur.

2. The petitioners are the defendants and respondents are the plaintiffs in O.S.No.109 of 2000. The respondents filed the suit for possession after removal of the bunk shop from the suit schedule premises by the petitioners and deliver vacant possession of the suit property to the respondents. The petitioners have filed written statement during September 2001 and are contesting the suit. Trial commenced. The respondent let in evidence and P.W.1 was examined in chief. When the suit was posted for cross examination of P.W.1 by the petitioners, the petitioners filed I.A.No.110 of 2013

for appointment of an Advocate Commissioner to inspect the suit property and measure the same with the help of surveyor.

3. According to the petitioners, in the earlier suit, their possession was recognised. In view of the same, the Advocate Commissioner has to be appointed to find out, who is in possession of the suit property.

4. The respondents filed counter affidavit and opposed the averments made in the affidavit filed in support of the application.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application on the ground that an Advocate Commissioner cannot be appointed to collect evidence and to find out the possession of the parties, without any sufficient reason being given in the application for Advocate Commissioner, it cannot be entertained, after commencement of trial.

6. Against the order of dismissal dated 03.07.2013 made in I.A.No.110 of 2013, the present civil revision petition is filed by the petitioners.

7. The learned counsel for the petitioners submitted that the petitioners' possession was recognised in the earlier suit filed by them. The bunk shop is situated within the suit property and location of the bunk shop is the disputed fact. Therefore, appointment of Advocate Commissioner is necessary to find out whether the disputed bunk shop is within the limits of the suit property or not. If the Advocate Commissioner is appointed, inspected the suit property and filed his report, oral evidence can be reduced. But the learned Judge on erroneous ground dismissed the application.

8. Per contra, the learned counsel for the respondents submitted that it is for the respondents to prove their case and get the relief of possession after removal of bunk shop. The intention of the petitioners is only to collect evidence on their behalf through the Advocate Commissioner. The learned Judge properly considered the fact and law and dismissed the application.

9. Heard both sides counsel and perused the materials available on record.

10. The respondents filed the suit seeking possession of the suit property after removal of the bunk shop. The petitioners are claiming that the bunk shop is situated in the suit property and their possession was recognised. The respondents have come out with the case that the bunk shop is not situated in the suit property and it is for the respondents to prove it by acceptable evidence and the Advocate Commissioner cannot be appointed to find out whether the bunk shop is situated in the suit property and whether the respondents are in possession of the suit property.

11. The learned Judge considering all the facts and law exercised his power conferred on him and dismissed the application. In these circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 03.07.2013.

12. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.06.2017

Index : Yes/No  
dm/kj

**V.M.VELUMANI, J.**

dm/kj

To

The District Munsif Cum  
Judicial Magistrate No.1,  
Hosur, Krishnagiri District.

C.R.P.(PD)No.4471 of 2013  
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