



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.150 of 2017 (PD)

and

C.M.P(MD)No.574 of 2017

1.K.S.Muhundhan

2.K.S.Mahendra Babu

.. Petitioners/ Petitioners/Plaintiffs

Vs.

K.L.Y.Sasidharan

..Respondent/ Respondent/Defendant

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to allow the Civil Revision Petition by setting aside the Decree and Judgment of the Principal District Court, Madurai in I.A.No.81 of 2014 in O.S.No.133 of 2014, dated 05.02.2015.

For Petitioner : Mr. S.Chandrasekar

ORDER

The petitioner has filed this Civil Revision Petition to set aside Decree and Judgment passed by the Principal District Court, Madurai in I.A.No.81 of 2014 in O.S.No.133 of 2014, dated 05.02.2015.

2.The petitioners are the plaintiffs. The respondent is the defendant. The petitioners filed suit in O.S.No.133/2013 for framing scheme decree appointing the petitioners as Trustee or to appoint any other fit person as Trustee. The petitioners also filed I.A.No.81/2014 for appointment of Advocate Commissioner to collect the details of number of tenants, rent paid by them and to conduct the enquiry regarding the monthly rent for the petition mentioned property to find out the real income of the Trust and also to assess the hindrances to perform Mandagappadi, Bojanas and Poojas in the properties and to file a report to assist the Court. According to the petitioners, the respondent is collecting huge amounts as rent and not properly accounting the same. The respondent has not furnished the correct details in the written statement with regard to the rent received for each property, when he tried to get the particulars, he was prevented.



3.The respondent filed counter affidavit and denied all the averments mentioned by the petitioners and stated that the petitioners are only the tenants and the appointment of Advocate Commissioner is not necessary to the nature of the relief claimed in the present suit. The application is filed to collect the evidence only to prove the case of the petitioner and therefore, prayed for dismissal of the application.

4.The learned Judge considering the averments made in the affidavit and counter affidavit and materials on record, dismissed the application holding that Advocate Commissioner can be appointed to local inspection for note down the physical features and Advocate Commissioner cannot appointed to collect the evidence with regard to details of tenants and rent paid by them.

5.Against the said order of dismissal, the petitioners have filed the present Civil Revision Petition.

6.The learned counsel for the petitioners submitted that the learned Judge erred in dismissing the application without considering the real facts. The learned Judge failed to apply the judicial mind in interpreting the exact meaning of collecting the evidence as per the judgment reported in 2006(5) CTC 501. The learned Judge failed to see that the petitioners have filed petition only in the interest of Trust to safeguard the income received by the Trust. The learned Judge failed to see that the petitioners are not only tenants in possession of the Trust property but they are also lineal descendents of the one of the founder of the Trust. The learned Judge ought to have seen that the details of the tenant and rent are necessary to assist the Court to decide the issue in the suit. The learned Judge ought to have seen that the respondent has given total income of the Trust and failed to give details of the rent collected from each tenant.

7.I have heard the learned counsel appearing for the petitioners and also perused the entire materials on record.

8.The petitioners filed suit for framing scheme to Trust and to appoint the petitioners as Trustees or to appoint any other fit person as Trustees. According to the petitioners, present Trustees are collecting huge amounts as rent and not properly accounting the same. In the circumstances, they have filed application for appointment of Advocate Commissioner for getting the details of tenants and rent paid by them. The details of tenants and rent paid by them are not necessary to the facts of the present case to decide the issue, in the suit, which is filing for framing scheme and appoint the petitioners as Trustee. The learned Judge has considered all the facts and rightly held that the appointment of Advocate Commissioner is not necessary to the facts of the present case and there is no illegality or irregularity warranting



interference by this Court.

9. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

10. The suit of the year 2014 and the respondent already filed the written statement on 04.01.2014. The Principal District Judge, Madurai is directed to dispose the suit in O.S.No.133 of 2014 as expeditiously as possible, in any event, not later than 31st August, 2017.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To
The Principal District Court,
Madurai.

Copy To:
The Section Officer/ Record keeper,
V.R Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.Chandrasekar, Advocate, SR No. 4012.

AM
PSM/MR-VB/02.02.2017/3P/4C

C.R.P (MD) No.150 of 2017 (PD)
23.01.2017