



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 15.11.2017

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD).No.1731 of 2017 (PD) &
C.M.P. (MD).No.9420 of 2017

WEB COPY

Narayanaswamy Thirukovil
Nachiyarkudiyiruppu
Represented by Trustee
C.Krishna Rajan
S/o.Chidambra Nadar
Ret. Special Sub Inspector of Police,
Residing at Nachiyarkudiyiruppu Oor,
Kanyakumari Village, Agasteeswaram Taluk,
Kanyakumari District in the respective capacity for
Himself and on behalf of the worshippers of the temple.
.. Petitioner/Petitioner/Plaintiff

Vs.

1.C.Varatharajan
2.C.Raveendran
3.Kamalan

... Respondents/Respondents/Defendants

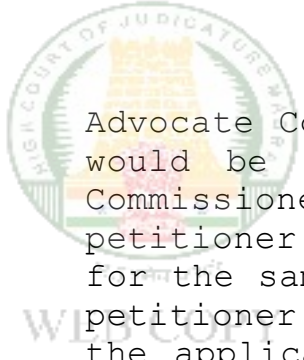
Prayer: Petition is filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 20.12.2016 in I.A No.634 of 2016 in O.S.No.33 of 2015 on the file of the Principal District Munsif, at Nagercoil.

For Petitioner : Mr.N.S.Ramakrishna Dass
For Respondents : Mr.K.P.Narayanakumar for R1 and R2
Mr.H.Thayumanaswamy for R3

ORDER

The petitioner is the plaintiff and the respondents are the defendants. The petitioner/plaintiff filed a suit in O.S.No.33 of 2015 before the Principal District Munsif, Nagercoil for declaration and permanent injunction. Pending suit, the plaintiff filed an interlocutory application in I.A.No.634 of 2016 to appoint an Advocate Commissioner in order to survey the petition scheduled property. The Trial Judge dismissed the said application after hearing both sides. Aggrieved against the said order, the petitioner is before this Court.

2. The learned counsel for the petitioner would submit that <https://hservices.ecourts.gov.in/hservices/> is in enjoyment and in possession of the suit property and in a suit for declaration, the appointment of an



Advocate Commissioner would only assist the Court and no prejudice would be caused to the respondents in appointing the Advocate Commissioner. The learned counsel would further submit that the petitioner is in possession of 17 cents and he claimed declaration for the same extent, but the learned Trial Judge presumed that the petitioner has title only to an extent of 8 cents and dismissed the application. Therefore, he prays this Court for setting aside the impugned order and to appoint an Advocate Commissioner.

3. The learned counsel for the respondents would submit that the petitioner cannot collect evidence through Advocate Commissioner and the Trial Court after taking into consideration of all these facts come to the conclusion that Advocate Commissioner is not necessary to decide the case on hand. Hence, the learned counsel prays this Court to dismiss the civil revision petition confirming the order of the learned Trial Judge.

4. In the plaint the petitioner averred that through partition deed the petitioner is in possession and enjoyment of 8 cents. However, the petitioner claimed declaration for 17 cents without any basis. The petitioner has to prove his case only based on records and evidence and he cannot collect evidence by appointing Advocate Commissioner, who is not at all necessary in the case on hand. The learned Trial Judge rightly considered that appointing the Advocate Commissioner would only benefit the petitioner to collect evidence, which is impermissible in law and dismissed the application. In my considered opinion the order passed by the learned Trial Judge is without any infirmity and the same does not warrant interference at the hands of this Court.

5. In the result, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

1.The Principal District Munsif, Nagercoil.

+1cc to Mr.K.P.NARAYANAKUMAR,Advocate,SR. 87587

+1cc to Mr.H.THAYUMANASWAMY,Advocate,SR. 87664

+1cc to Mr.N.S.RAMAKRISHNADASS,Advocate,SR. 87832

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