



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.223 of 2017 (NPD)

and

C.M.P(MD)No.1108 of 2017

1.Natarajan
2.Malleeswari

.. Petitioners/Petitioners/Defendants

Vs.

Marimuthu

.. Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the Fair and Decreetal Order passed by the learned District Munsif, Aranthangi in I.A.No.724 of 2016 O.S.No.11 of 2015, dated 16.12.2016.

For Petitioner : Mr.D.Rameshkumar

ORDER

This petition has been filed by the petitioner to set aside the Fair and Decreetal Order passed by the learned District Munsif, Aranthangi in I.A.No.724 of 2016 O.S.No.11 of 2015, dated 16.12.2016.

2.The petitioners are the defendants and the respondent is the plaintiff in the suit. The petitioners filed suit in O.S.No.11 of 2015 for declaration that the plaintiff is the absolute owner of the suit property and for permanent injunction restraining the defendants, their men from interfering with his peaceful possession and enjoyment of the property. The respondent filed I.A.No.62 of 2015 for appointment of Advocate Commissioner. The said application was ordered and an Advocate Commissioner was appointed and he inspected the suit property and filed his report. The petitioners filed I.A.No.724 of 2016 for appointment of Advocate Commissioner to measure the suit property as per the Revenue Records with the help of surveyor and Village Administrative Officer and to measure the property on the North, South and Eastern side of the adjacent property of the suit property and measure the property by comparing 5 documents filed by the respondent with written statement. In the said application, the respondent filed counter affidavit and objected the same.



3.The learned Judge considering the averments made in the affidavit and counter affidavit dismissed the application filed by the petitioners holding that already an Advocate Commissioner was appointed and filed his report after inspecting the property and also held that the suit filed by the respondent is for injunction and it is for the respondent/plaintiff to prove his case and petitioners have not given any reason for appointment of Advocate Commissioner.

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

5.The grievance of the petitioners is that the learned Judge has not properly appreciate the reason given by the petitioners for appointment of Advocate Commissioner. The learned Judge ought to have seen that the petitioners have to prove their case only when the Advocate Commissioner is inspected the property and filed his report with regard to nature of the property will be in a position to prove their case. The suit property is belonged to the petitioners and respondent is not in possession of the suit property.

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

7.From the records, it is seen that the respondent has filed suit for permanent injunction and it is for the respondent to prove his possession and substantiate his case for decree of injunction. The petitioners claim that they have fenced the property and they are in possession. They have to prove their claim only by letting in acceptable evidence. The petitioners cannot collect the evidence with regard to the possession through Advocate Commissioner. It is well settled that in the suit for injunction Advocate Commissioner cannot be appointed to inspect the property to collect evidence. It is for the parties to prove their possession. The learned Judge has considered all the materials in proper perspective, dismissed the application and there is no illegality or irregularity warranting interference by this Court.

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

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

The District Munsif, Aranthangi.

+1 cc to M/s.D.Rameshkumar, Advocate in SR.No.6508

C.R.P (MD) No.223 of 2017 (PD)

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