



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.234 of 2017 (PD)
and

C.M.P. (MD) No.1063 of 2017

1.P.Muthuchamy
2.P. Muthuraman
3.Banumathi
4.Annalakshmi
5.Murugeshwari
6.Lakeeswaran
7.Ravichandran

...Petitioners/Plaintiffs

Vs

1.Balkis Banu
2.Abuthakir

...Respondents /Defendants

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to call for the records and set aside the same fair and decreetal order, dated 21.10.2016 in I.A.No.450 of 2016 in O.S.No.679 of 2015 passed by the learned Principal District Munsif, Dindigul allow this Revision with costs.

For Petitioner : Mr. H. Lakshmi Shankar

ORDER

The petitioners have filed this Civil Revision Petition to set aside the fair and decreetal order, dated 21.10.2016 in I.A.No.450 of 2016 in O.S.No.679 of 2015 passed by the learned Principal District Munsif, Dindigul.

2.The petitioners are the plaintiffs and the respondents are the defendants in the suit. The petitioners/plaintiffs filed suit in O.S.No.679 of 2015 for permanent injunction against the respondents. Pending suit, the petitioners filed an application in I.A.No.782 of 2015 for amendment of the prayer to amend the plaint for the relief of declaration and recovery of possession. The said application is pending. Thereafter, the petitioners filed the present application in I.A.No.450 of 2016 for appointment of Advocate Commissioner to note down the physical features and to measure the property with the help of surveyor and to file report with regard to boundaries. According to the petitioners, the property allotted to their father Pitchai Maniam in the partition and they have equal share along with their father. The sale of undivided share by their father is not binding on them.

<https://hcservices.ecourts.gov.in/hcservices/>

3.In the said I.A., the respondents filed counter affidavit and opposed the said application and submitted that the suit property was sub-divided and they obtained patta after their purchase from Jiovudeen and they are in possession and enjoyment of the property by cultivating the same. At the time of purchase itself, the



property was measured by the surveyor and subdivided and separate patta was issued to them.

4.The learned Judge considering the averments made in the affidavit and counter affidavit and the materials available on record and the relief of permanent injunction sought for by the petitioners, dismissed the application holding that the petitioners have not given any reason for appointment of Advocate Commissioner.

5.Against the said order of dismissal, the petitioners have come out with the present Civil Revision Petition.

6.The learned counsel appearing for the petitioners reiterated the grounds raised in the Civil Revision Petition and contended that there is a dispute with regard to property and therefore, appointment of Advocate Commissioner is necessary to note down the physical features.

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

8.From the materials on record, it is seen that the petitioners filed suit for permanent injunction against the respondents. Subsequently, they have filed I.A.No.782 of 2015 for amendment of the plaint to include the relief of declaration and recovery of possession. The said application is pending. Pending application, the petitioners filed I.A.No.450 of 2016 for appointment of Advocate Commissioner. In the said application the petitioners have stated that sale by their father is not binding on them as their father sold the undivided share in the joint family property. On the other hand, the respondents have stated that the property purchased by them was measured, subdivided and separate patta was issued to them and they are in possession and enjoyment of the same by cultivating the said property. The learned Judge considered all these facts and rightly exercised his jurisdiction properly 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 learned counsel appearing for the petitioners further submitted that in the event of succeed in the application for amendment, the petitioners may be permitted to file a fresh application for appointment of Advocate Commissioner. It is open to him to file a fresh application, if necessary.

Sd/-
Assistant Registrar

/TRUE COPY/



To

The Principal District Munsif,
Dindigul.

+1 cc to MR.H.LAKSHMI SHANKAR, Advocate, SR.No:6445

am

sva/sv/mms/20.022017/3p/3c

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