



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP(MD).No.1858 of 2016 and

CMP(MD).No.8910 of 2016

WEB COPY

1.M.Subbiah
2.M.Balaiah
3.M.Chinnaraja
4.M.Ramasamy
5.M.Balakrishnan
6.K.Akila
7.K.Balasubramanian
8.Krishnaprabha
(petitioners rep. through their
power of attorney J.John Alexander) : Petitioners/Petitioners/
Plaintiffs

Vs.

1.N. Saraswathi
2.N.Baskar Pukazhraj : Respondents/Respondents/
Defendants

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the order made in I.A.No.761 of 2014 in O.S.No.409 of 2013 on the file of the Additional District Munsif, Thoothukudi, dated 05.11.2014.

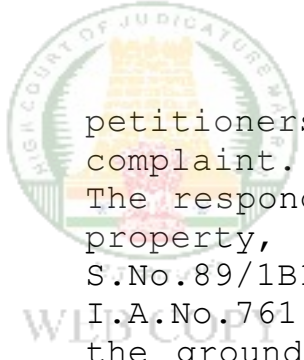
For Petitioners : Mr.P.N. Vishnuvarthan
For Respondents : Mr. G. Prabhu Rajadurai

O R D E R

This Civil Revision Petition is filed against the order made in I.A.No.761 of 2014 in O.S.No.409 of 2013 on the file of the Additional District Munsif, Thoothukudi, dated 05.11.2014.

2. The revision petitioners are the plaintiffs. The respondents are defendants in the suit in O.S.No.409 of 2013, on the file of the Additional District Munsif, Thoothukudi.

3. The petitioners filed suit for injunction restraining the respondents from interfering with their peaceful possession and enjoyment of the property, According to the petitioners, they are the owners of the property having inherited from their ancestors viz., Subbu Konar and Muniasamy Konar and they are in possession and enjoyment of 47 cents of the suit property in S.No.89/1B1 of Mappillaioorani Village. The respondents without any title are trying to interfere with the peaceful possession and enjoyment of the property. On two occasions, the petitioners gave a complaint to the concerned Police. The concerned Police warned the respondents not to interfere with the peaceful possession of the



petitioners. On third occasion, the Police did not receive complaint. Therefore, the petitioners filed suit for injunction. The respondents filed written statement and claimed title over the property, measuring 3 acres 7 cents from the suit property in S.No.89/1B1 in Mappillaioorani village. The petitioners filed I.A.No.761 of 2014, for appointment of Advocate Commissioner on the ground that the suit property is different from the property claimed by the respondents. Only if the Advocate Commissioner is appointed to measure the suit property and the defendants property with the help of Surveyor, the issue can be decided.

4. The respondents filed counter and opposed the application.

5. The learned Judge considered the averments in the affidavit and counter affidavit and the materials available on record, dismissed the application holding that in suit for injunction, it is for the petitioners to prove their claim.

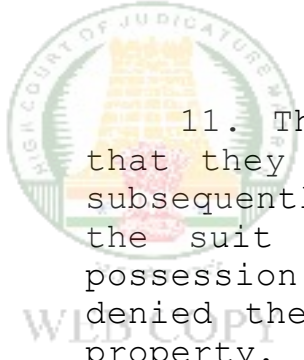
6. Against the said order dated 05.11.2014, the petitioners have come out with the present Civil Revision Petition.

7. The learned counsel appearing for the petitioners submitted that appointment of Advocate Commissioner is necessary for the facts of the present case, as the suit property is different from the property claimed by the respondents. The learned Judge without giving any reason dismissed the application on the sole ground that to find out the possession of the property appointment of Advocate Commissioner, is not necessary.

8. The learned counsel appearing for the petitioners relied on the Judgment reported in 2016(3)MNW Civil 614 (B. Amudha Vs. Anandhi Sankara Narayanan) and submitted that when there is a dispute with regard to physical possession of the suit property, an Advocate Commissioner can be appointed.

9. Per contra, learned counsel appearing for the respondents submitted that in a suit for injunction, it is for the petitioners to prove the possession by oral and documentary evidence. The Advocate Commissioner cannot be appointed to collect the evidence and the report the Advocate Commissioner with regard to possession is not conclusive. The learned counsel for the respondents relied on the Judgment report in 2005(3) MLJ 473 (Chandrasekaran and others Vs. V. Doss Naidu) and submitted that appointment of Advocate Commissioner for making enquiry about the factum of the possession of the property in dispute, is improper, since the same has to be adjudicated upon framing issues and recording the evidence.

<https://hcservices.courts.gov.in/hcservices>
10. I have heard the learned counsels appearing on either side and perused the materials available on record.



11. The petitioners filed suit for injunction on the ground that they became owners by inheritance from their ancestors and subsequently, the petitioners are in possession and enjoyment of the suit property and respondents are interfering with their possession and enjoyment of the property. The respondents have denied the title and possession of the petitioners in the suit property. The petitioners have come out with the suit for injunction has to prove their possession by acceptable oral and documentary evidence. The Advocate Commissioner cannot be appointed in the facts of the present case. The Judgments relied on by the counsel for the petitioners is not applicable to the facts of the present case. On the other hand, the Judgment relied on by the counsel for the respondents is squarely applicable to the facts of the present case.

12. In all the matter the Advocate Commissioner can be appointed depending upon the facts and circumstances of the each case. In the present case, the petitioners have to prove that they are in possession and enjoyment of 47 Cents in S.No.89/1B1 as stated in the plaint. The petitioners have gone in the guise of application for appointment of Advocate Commissioner to collect the evidence to prove that they are in possession and enjoyment of the property.

13. In the circumstances, the learned Judge considered all the materials on record in proper perspective and has given valid and cogent reasons for dismissing I.A.No.761 of 2014 in O.S.No.409 of 2013 on the file of the Additional District Munsif Court, Thoothukudi, dated 05.11.2014. Further, the learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.

14. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The Additional District Munsif, Tuticorin.

Copy To:

The Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.N.Anandakumar, Advocate, Sr No.3112

+1cc to G.Prabhu Rajadurai, Advocate, SR No.3008

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