



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2017

CORAM :

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

C.R.P. (PD) No. 2597 of 2016

WEB COPY

1. Alagappan

2. Egammai

... Revision Petitioners/
Petitioners/Defendants 3 and 4
Vs.

Adaikkappa Thevar

... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 31.08.2016 passed in I.A.NO.202 of 2015 in O.S.No.188 of 2013 on the file of the learned Sub Court, Pudukkottai.

For Petitioners

: Mr.G.Mathavan

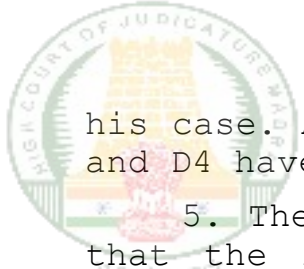
O R D E R

This Civil Revision Petition is filed against the fair and decreetal order dated 31.08.2016 passed in I.A.No.202 of 2015 in O.S.No.188 of 2013 on the file of the learned Sub Court, Pudukkottai.

2. The petitioners are the defendants 3 and 4 and the respondent filed O.S.No.188 of 2013 for declaration that the respondent is the absolute owner of the suit property and for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property. The petitioners/the defendants 3 and 4 filed Interlocutory Application in I.A.No.202 of 2015 for appointment of Advocate Commissioner to inspect the suit property with the help of the Village Administrative Officer, Surveyor to measure the suit property to find out encroachment by the petitioners.

3. According to the petitioners, they are the owners of northern side of the suit property and they are residing in the said property and not encroached the suit property. The respondent filed a counter and opposed the said application for appointment of Advocate Commissioner. It is not his case that the petitioners have already encroached the suit property. On the other hand, it is the case of the respondent that the petitioners tried to encroach the suit property and the respondent prevented their attempt.

4. The learned Judge considering the averment made in the affidavit and the counter affidavit dismissed the application holding that the respondent has not stated that the petitioners encroached the suit property. It is for the respondent to prove



his case. Aggrieved by the said order, the revision petitioners/D3 and D4 have filed the present Civil Revision Petition.

5. The learned counsel for the revision petitioners submitted that the learned Judge failed to see that the application for appointment of Advocate Commissioner is necessary to find out the encroachment made by the petitioners in the suit property. According to the petitioners, the petitioners have not encroached the suit property and they are residing only in the northern side of the suit property and therefore, prayed for allowing this Civil Revision Petition.

6. Heard the learned counsel appearing for the petitioners and perused the materials available on record.

7. A reading of the plaint shows that the respondent has stated that the petitioners are trying to encroach the suit property and the respondent prevented the petitioners from encroaching the suit property. In the circumstances, he has filed the suit for declaration and injunction restraining the petitioners. The respondent has not stated that the petitioners already encroached. In the circumstances, appointment of Advocate Commissioner is not necessary. There is no irregularity or infirmity in the order of the learned Judge dismissing the application filed for appointment of Advocate Commissioner.

8. In the result, this Civil Revision Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To
The Subordinate Judge,
The Sub Court, Pudukkottai.

Cm
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