



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.01.2017

CORAM:

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

C.R.P.PD. (MD) No.2653 of 2016

and

C.M.P. (MD) No.12468 of 2016

WEB COPY

1.A.Titus
2.Maria Glory

... Petitioners

Vs.

1.Selestin Mary
2.Raj

... Respondents

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 05.10.2016 passed in I.A.No.41 of 2016 in O.S.No.290 of 2015 by the I Additional District Munsif, Kuzhithurai.

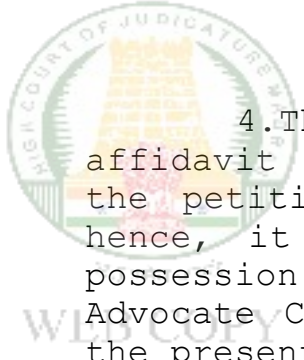
For Petitioners : Mr.C.K.M.Appaji

ORDER

This Civil Revision Petition is filed to set aside the order dated 05.10.2016 passed in I.A.No.41 of 2016 in O.S.No.290 of 2015 by the I Additional District Munsif, Kuzhithurai. The petitioners are the defendants and the respondents are the plaintiffs. The respondents filed a suit for bare injunction restraining the defendants and their men from disturbing the peaceful possession and enjoyment of the plaintiff over the suit property by trespassing into and by any other manner.

2.The petitioners filed an application in I.A.No.41 of 2016 for appointment of an Advocate Commissioner to note down the physical features of the suit property. According to the petitioners, the respondents encroached 1 cent of the property belonging to St.Lucial Church, Erayumanthurai while constructing their house and a compound wall on the eastern side of the suit property. Therefore, the appointment of an Advocate Commissioner is necessary to inspect the suit property.

3.The respondents filed a counter affidavit and opposed the said application. The property situated in R.S.No.329/4 to an extent of 41.52 cents is a Government land and Government has assigned patta to the landless poor affected by Tsunami for the construction of houses and they have constructed the house in Survey No.R.S.No.329/4 and the respondents' house is the last house in the row. The property is not belonging to the said church and it is a Government property. The respondents have not encroached on property of the said Church and prayed for dismissal of the application.



4.The learned Judge considering the averments made in the affidavit and counter affidavit and materials on record dismissed the petition stating that the suit is for bare injunction and hence, it is for the respondents / plaintiffs to prove their possession and in a suit for bare injunction appointment of Advocate Commissioner is not necessary. Against the said order, the present Civil Revision Petition is filed.

5.The learned counsel for the petitioners submitted that the learned Judge failed to consider the fact that the respondents have encroached 1 cent of land belonging to the Church at the time of construction of their house and put up a compound wall and therefore, it is necessary for appointment of an Advocate Commissioner.

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

7.The respondents have filed a suit for bare injunction against the petitioners. It is not the case of the petitioners that the respondents have encroached the land belonging to them. On the other hand, it is their case that the land belongs to the above said Church and respondents have encroached 1 cent and put up construction. The respondents having filed the suit for injunction against the petitioners, have to prove their case by acceptable evidence. Further the respondents have to prove their possession and also that the petitioners are interfering with their possession.

8.In the circumstances, the learned Judge has rightly held that Advocate Commissioner cannot be appointed in view of the nature of the relief sought for by the respondents. There is no irregularity or illegality in the order passed by the learned Judge. Accordingly, the Civil Revision Petition is dismissed.

No costs. Consequently, connected C.M.P.is closed.

Sd/-

Assistant Registrar (CS I)

/TURE COPY/

Sub Assistant Registrar

To

The I Additional District Munsif, Kuzhithurai.

+1 cc to MR.C.K.M.Appaji, ADVOCATE, SR NO: 736

AAM SS2 KSM 09.02.2017 2P 3C

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