

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.03.2018

CORAM

THE HONOURABLE MR. JUSTICE **D.KRISHNAKUMAR**

CIVIL REVISION PETITION (PD) No.1100 of 2018
and
C.M.P.No.5786 of 2018

1.K.Anandhan

2.K.Palani

3.Hema Kumar

.. Petitioners

VS

M.Kumaravelu

.. Respondent

The Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the fair order and decretal order dated 30.01.2018 passed in I.A.No.766 of 2017 in O.S.No.167 of 2012 on the file of the learned Subordinate Judge, Ranipet.

For Petitioners

... Mr.G.R.M.Palaniappan

ORDER

The Civil Revision Petition has been filed to set aside the fair order and decretal order dated 30.01.2018 passed in I.A.No.766 of 2017 in O.S.No.167 of 2012 on the file of the learned Subordinate Judge, Ranipet.

2.According to the petitioners/defendants, the

respondent/plaintiff filed a suit in O.S.No.167 of 2012 against the petitioners for permanent injunction. In the aforesaid suit, the third defendant filed an application in I.A.No.766 of 2017 under Order 26 Rule 9 of CPC to appoint an Advocate Commissioner, to measure the suit property with the help of District Surveyor and submit a report along with sketch before the Court below. The trial Court, dismissed the said application, by order dated 30.01.2018 holding that Advocate Commissioner cannot be appointed to find out, who is in possession of the suit property. Aggrieved by the said order, the present Civil Revision Petition has been filed by the petitioner.

3.The learned counsel for the petitioner submitted that the trial Court, without considering the contention of the petitioner, has erroneously dismissed the application as there is no necessity to appoint an Advocate Commissioner to find out the Old Survey Number and who was in possession in the permanent injunction suit. Hence, the impugned order passed by the Court below is unsustainable and the same is liable to be set aside.

4.Heard the learned counsel for the petitioner and perused the materials available on record.

5. On perusal of affidavit filed in support of the application, it is seen that already a suit in O.S.No.104 of 2005 was filed by one Dhanapal against the petitioner and his father and the same was dismissed on 07.09.2009. Now, the plaintiff filed the present suit in O.S.No.167 of 2012 as against the same property. Therefore, an Advocate Commissioner has to be appointed to measure and find out the factum of possession over the suit property by collecting necessary materials.

6. On perusal of the impugned order, it is seen that the suit has been filed for permanent injunction by the respondent/plaintiff and in the said suit, the respondent has to prove his lawful possession and enjoyment of the suit property by relevant documents and let in oral evidence. Therefore, the learned trial Judge, rightly, dismissed the said application as there is no necessity to appoint the Advocate Commissioner to find out who is in possession.

7. Considering the aforesaid prayer in the suit as well as the reasons stated in the affidavit filed by the petitioners in the

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aforesaid application, the order of the Court below is sustainable and does not warrant interference of this Court. Hence, the Civil Revision Petition is liable to be dismissed.

In the result, the Civil Revision Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.03.2018

Speaking/Non Speaking order.

Index: Yes/No.

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To

The Subordinate Judge,
Ranipet.

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