

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.04.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(PD)No.1149 of 2018
and C.M.P.No.5959 of 2018

1.Annamalai
2.Vasanthi
3.Somu
4.Moorthy

.. Petitioners

Vs.

Murugesan

... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the order and Decretal order dated 04.01.2018 made in I.A.No.75 of 2017 in O.S.No.211 of 2014 on the file of the District Munsif Court, Sankari.

For Petitioner : Mr.C.Kulanthaivel

ORDER

This Civil Revision Petition has been filed by the petitioners against the order passed by the learned District Munsif, Sankari in I.A.No.75 of 2017 in O.S.No.211 of 2014 dated 04.01.2018.

2. The defendants in O.S.No.211 of 2014 on the file of the District Munsif Court, Sankari, are the revision petitioners herein.

3. According to the petitioners, the respondent herein has filed the suit in O.S.No.211 of 2014 seeking permanent injunction restraining the defendants/revision petitioners herein from interfering with the peaceful possession and enjoyment of the suit property. The defendants have filed a petition in I.A.No.75 of 2017 for appointment of Advocate Commissioner to note down the physical features and to measure the suit property and to submit report along with sketch and plan. The petitioners herein had filed the written statement stating that they have laid down the basement and they are in possession and enjoyment of the suit property for the past ten years. During the cross examination of P.W.1 and P.W.2, they have categorically denied that there is no basement in the subject land. Therefore, in order to prove their case, the petitioners/defendants seeks to note down the physical features and to measure the suit property prays to appoint Advocate Commissioner. The trial Court failed to considered the facts of the case and dismissed the application. Aggrieved by the same, the petitioners have filed the present civil revision petition before this Court.

4. Heard the learned counsel for the petitioners and also perused the available records.

5. On a perusal of the records, it is not in dispute that the respondent has filed the suit against the revision petitioners in O.S.No.211 of 2014 for permanent injunction. The first petitioner has already filed the written statement, in which, it is stated that even ten years before they had put up a foundation. They have not filed any application in the first instance. Advocate Commissioner cannot say who has constructed and when it has been constructed. The trial Court has given a reason that the suit is filed for permanent injunction, no Advocate Commissioner can be appointed to gather the evidence regarding the possession of the suit property.

6. Considering the facts and circumstances of this case, I do not find any reason to interfere with the order passed by the learned District Munsif, Sankari in I.A.No.75 of 2017 in O.S.No.211 of 2014 dated 04.01.2014. Hence, the order of the trial Court is hereby confirmed and the Civil Revision Petition is dismissed in the admission stage itself. Consequently, the connected Miscellaneous petition is closed. No costs.

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04.04.2018

Index:Yes/No
Internet : yes/No
Speaking order / Non speaking order
kkd

P.VELMURUGAN,J.

kkd

To

The District Munsif Court,
Sankari.



C.R.P. (PD) No. 1149 of 2018
& C.M.P. No. 5959 of 2018

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