

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2018

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

C.R.P.(PD) No. 1219 of 2018

1. Rukmani
2. Krishnan
3. Saravanan

..Petitioners

Vs.

Pownammal

..Respondent

Prayer: Civil Revision Petition to set aside the fair and decretal order dated 21.11.2017 passed in I.A. No. 405 of 2017 in O.S. No. 85 of 2015 by the District Munsif cum Judicial Magistrate Court, Kattumannarkoil.

For Petitioners : Ms.G. Sumitra

सत्यमेव जयते
ORDER

This Civil Revision Petition has been filed as against the dismissal of the application in I.A. No. 405 of 2017 in O.S. No. 85 of 2015 filed by the petitioner seeking appointment of an Advocate Commissioner to note down the physical features of the suit property, by order dated 21.11.2017, passed by the learned District Munsif cum Judicial Magistrate, Kattumannarkoil,

2. Heard the learned counsel for the petitioner.

3. It is seen from the records that the respondent filed the suit for permanent injunction injuncting the petitioners/defendants from interfering with her possession of the property. Written statements were filed in 2015. When the suit was ripe for trial in the year 2017, the application in I.A. No. 405 of 2017 had been taken out by the petitioners on the ground that the respondent/plaintiff's husband has got only 0.01cent in the suit survey number and remaining extent is in possession of the petitioners and the 2nd defendant. Therefore, if an Advocate Commissioner is appointed, he will note down the physical features of the suit property and that will be helpful for the Court to adjudicate the issues involved. However, the said application was dismissed by the Trial Court holding that the extent of the property possessed by the parties have to be decided based on oral and documentary evidence. If an Advocate Commissioner is appointed for the purpose mentioned in the application, then it would amount to finding out as to who is in possession of the suit property. When the suit itself is for permanent injunction, that too, filed by the respondent/plaintiff, the burden of proof is cast upon the respondent and based on pleadings and evidence and documents to be exhibited before the Trial Court, the issue will have to be decided. In the judgments relied on by

the Trial Court rendered in *Chandrasekaran V. Doss Naidu* (2005 (3) MLJ Page 473) and *Krishnamurthy T.K. V. Tamil Nadu Water and Drainage Board* (2006 (5) CTC Page 178), it has been categorically stated that an Advocate Commissioner should not be appointed to gather evidence to prove the case of the parties. The application filed in I.A. No. 405 of 2017 is nothing but an attempt made by the petitioners to find out as to who is in possession of the suit property, which was rightly dismissed by the Trial Court. Therefore, the civil revision petition fails and the same is dismissed. No costs.

28.03.2018

nv

To

The District Munsif cum Judicial

Magistrate Court, Kattumannarkoil.

सत्यमेव जयते

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N. KIRUBAKARAN,J.

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