

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2018

CORAM:

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

CRP(PD).No.526 of 2018
and CMP.No.2751 of 2018

1.Varatharajan
2.Anandalakshmi

.. Petitioners

Vs

Ravi

.. Respondent

PRAYER

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 02.01.2018 in IA.No.562 of 2017 in OS.No.268 of 2016 on the file of I Additional District Munsif Court, Erode, as prayed for to set aside the same.

For Petitioners : Mr.S.Kaithamalai Kumaran

ORDER

सत्यमेव जयते

According to the revision petitioners, the respondent herein has filed a suit in OS.No.268 of 2013 for permanent injunction against the revision petitioners and two others. In the aforesaid suit, the revision petitioners / defendants 2 and 3 have also filed an application in IA.No.562 of 2017 under Order 26 Rule 9 and Section 151 of the Civil Procedure Code to appoint Advocate Commissioner to inspect the

suit property for local investigation and to file report and plan. The respondent has filed counter statement before the court below. After considering the contentions of both parties, the court below has dismissed the said application by relying upon the decision of this Court in the case of *T.K.Krishnamurthy Vs. Tamil Nadu Water Supply and Drainage Board* reported in **2006 (5) CTC 178**. Against the said order, the revision petitioners have filed the present Civil Revision Petition before this Court.

2. The learned counsel for the revision petitioners would submit that there is a dispute regarding nature of the property, whether the suit property is a vacant land or there is a building in the suit property. Hence, only to minimise the evidence in the above suit and in the interest of justice, the present application has been filed for appointment of an Advocate Commissioner. But the court below has erroneously dismissed the said application without considering the contentions of the revision petitioners. Hence, the revision petitioners have filed the present Civil Revision Petition before this Court.

3. Heard the learned counsel for the revision petitioners and perused the materials available on record.

4. On perusal of the records, it seems from the aforesaid plaint in the suit, the respondent has filed the suit for permanent injunction. It is the case of the respondent that the suit property is a vacant land, the pleading raised in the plaint and nature of the property has to be decided by producing necessary oral and documentary evidence at the time of trial in the suit. As rightly pointed by the trial court, appointing an Advocate Commissioner is nothing but to collect material evidence to prove the possession of the suit property. Therefore, in the light of the decision of this Court in the case of *T.K.Krishnamurthy Vs. Tamil Nadu Water Supply and Drainage Board* reported in **2006 (5) CTC 178**, the court below has rightly dismissed the instant application. Therefore, there is no error or illegality in the order passed by the court below and the Civil Revision Petition is liable to be dismissed.

5. Thus, the Civil Revision Petition is dismissed with above observations. Consequently, the connected miscellaneous petition is closed. No costs.

16.02.2018

Speaking/Non-Speaking order
 Index :Yes/No
 Internet:Yes/No
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D. KRISHNAKUMAR J.,

lok

To

The I Additional District Munsif Court,
Erode



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