



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2018

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.651 of 2018

and

C.M.P. (MD) No.2820 of 2018

K.Abdul Majeed (Died)

- 1.Asia Bivi
- 2.A.Jihaar Ali
- 3.Sirajudeen
- 4.Jaffer Ali
- 5.Vahidha Banu
- 6.Sameema Banu

... Petitioners/Petitioners/
Defendants

vs.

M.Fathima Bi

... Respondent / Respondent /
Plaintiff

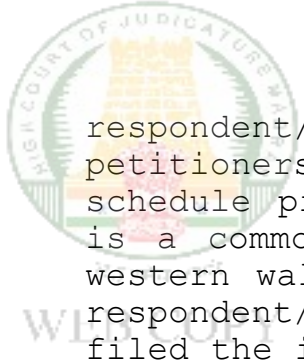
PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 22.01.2018 passed in I.A.No.951 of 2017 in O.S.No.1190 of 2008 on the file of the Principal District Munsif Court, Thiruchirappalli.

For Petitioners : Mr.R.Sundar Srinivasan
For Respondent
/ Caveator : Mr.S.Vinod Sathya Lazar

ORDER

This Civil Revision Petition has been filed challenging the order passed by the learned Principal District Munsif, Thiruchirappalli, in I.A.No.951 of 2017 in O.S.No.1190 of 2008 dated 22.01.2018.

2. Among other things, the learned Counsel for the petitioners would submit that the respondent herein, as plaintiff, has filed the suit in O.S.No.1190 of 2008 before the Principal District Munsif Court, Thiruchirappalli, for the relief of declaration and injunction regarding the 'C' schedule property. According to the petitioners, the respondent/plaintiff, in the plaint, has wrongly mentioned the extent of 'A' schedule property as 1516 sq.ft., instead of 2700 sq.ft. He would further contend that the



respondent/plaintiff, in the plaint, has falsely stated that the petitioners/defendants have dumped unwanted materials in the 'C' schedule property. Moreover, the eastern wall of the suit property is a common wall and there exist hook stones on the eastern and western wall of the suit property, which were not disclosed by the respondent/plaintiff. Therefore, the petitioners/defendants have filed the interlocutory application in I.A.No.951 of 2017 to appoint an Advocate Commissioner so as to note down the physical features. But, the lower Court, after hearing both the sides, has erroneously dismissed the petition on the ground of delay and therefore, he prays for interference in the impugned order, by allowing this revision petition.

3. The learned Counsel for the respondent/defendant would refute the contentions of the petitioners and he would submit that the respondent has purchased the 'C' schedule property by virtue of a sale deed dated 13.12.2007. He would further submit that the respondent has already owned the house property on the eastern side of the 'C' schedule property and therefore, the petitioners/defendants have no right to interfere with the peaceful possession of the respondent. Moreover, as there is no dispute regarding the measurement or identity of the disputed property, appointment of Advocate Commissioner is at all not warranted, as rightly held by the Court below and therefore, he prays for dismissal of the present revision.

4. Heard the learned Counsel appearing on both sides and perused the documents placed on record.

5. It is seen that the suit is of the year 2008. Written statements were filed as early as on 17.03.2009 and trial was also commenced in the month of October 2013 itself. It is also seen that the Court below has closed the evidence of both sides and when the matter was posted for arguments, the same was re-opened several times, at the instance of both the parties.

6. The present interlocutory application seeking appointment of Advocate Commissioner was filed in the year 2017, i.e., nearly after a lapse of nine years from the date of institution of the suit, the present interlocutory application was filed. It is not known what prevented the petitioners/defendants from filing a Commissioner application even at the time of filing of their written statements or even at the time of examination, i.e., after commencement of trial.

7. Considering the facts and circumstances of the case, this Court is of the view that the present Commissioner application is filed only with an intention to drag on the proceedings, as rightly held by the Court below. Even on merits, this Court is of the view that appointment of Advocate Commissioner is not warranted, since there is no dispute regarding the measurement or identity of the property in question with reference to the title deeds.



8. In such a view of the matter, this Court is not inclined to entertain this civil revision petition and the same is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Tiruchirappalli.

+ 1 CC TO Mr.R.SUNDAR SRINIVASAN, ADVOCATE IN SR No. 56829
+ 1 CC TO Mr.S.VINOD SATHIYA LAZAR, ADVOCATE IN SR No. 57064

GK

TE/KKR/SAR-4 : 06/04/2018 : 3P/4C

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