



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2018
(Reserved on 15.03.2018)

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (NPD) (MD) No.1492 of 2014
and
MP (MD) No.1 of 2014

1) Periya Shanmugam
2) Muthammal ... Petitioners/Respondents 1 & 2/Plaintiffs 1 & 2
vs.

1) Shenbagaraman
2) Ovu Reddiar ... Respondents 1 & 2/Petitioners 1 & 2/
Appellants
3) Muthaiah
4) Kumarandi
5) Krishnasamy
... Respondents 3 to 5/Respondents 3 to 5/Defendants 1 to 3

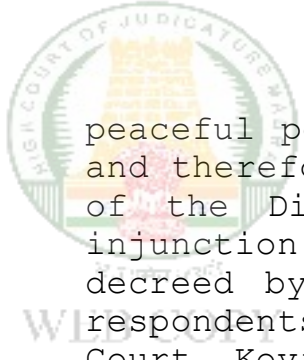
Petition filed under Article 227 of the Constitution of India, against the order and decreetal order dated 08.04.2014 passed by the Subordinate Judge, Kovilpatti, in I.A.No.82 of 2013 in A.S.No.44 of 2012.

For Petitioner : Mr.E.V.N.Siva
For R1 & R2 : Mr.R.Devaraj
For R3 to R5 : No appearance

ORDER

This revision petition has been filed against the order and decreetal order dated 08.04.2014 passed by the Subordinate Judge, Kovilpatti, in I.A.No.82 of 2013 in A.S.No.44 of 2012.

2.The petitioners herein are father and son and respondents 3 to 5 are brothers of the 2nd petitioner born through the first wife of the 1st petitioner. The plaint schedule property was allotted to the petitioners as per the final decree of partition dated 28.01.1987 in O.S.No.56 of 1962 and possession was handed over on 01.03.1988 as per E.P.No.115 of 1987 and delivery was recorded on 16.03.1988. From the said date, the plaint schedule property was in the possession of the petitioners. The respondents 3 to 5 do not have any right whatsoever in the plaint schedule property. Similarly, respondents 1 and 2 attempted to interfere in the



peaceful possession and enjoyment of the plaint schedule property and therefore, the petitioners filed O.S.No.65 of 2009 on the file of the District Munsif Court, Vilathikulam, seeking permanent injunction against the respondents herein and the said suit was decreed by judgment and decree dated 08.03.2012, against which, respondents 1 and 2 filed A.S.No.44 of 2012 on the file of the Sub Court, Kovilpatti.

3.In the appeal, the respondents 1 and 2 filed an application for appointment of advocate commissioner at the appellate stage. The petitioners filed counter opposing the commissioner application. However, by impugned order dated 08.04.2014, the learned Sub Judge allowed the commissioner application appointing the advocate commissioner to survey the plaint schedule property with the help of land surveyor and also to note down the physical features of the plaint schedule property and to file a report along with sketch on 30.04.2014, against which, the present revision petition has been filed.

4.Learned counsel for the respondents 1 and 2 would state that if only advocate commissioner is appointed, he would be able to state what is the extent of the land available with the petitioners and therefore, the learned Judge relying upon the judgment reported in 2011 (3) T.N.C.J.949(Mad) T.Ratnavel vs. P.A.T.Sundaravel and others held that even in appeal, advocate commissioner could be appointed to find out the location of plaintiffs' and defendants' property with the help of land surveyor. Learned counsel for the respondents 1 and 2 would further submit in this case, it is only to identify the location of the property, based on the above judgment, advocate commissioner has been appointed and therefore, the order of the learned Judge need not be interfered with.

5.Heard the learned counsel for the petitioners as well as the respondents 1 and 2 and perused the materials available on record. Despite service of notice, respondents 3 to 5 have not chosen to appear in person or through pleader.

6.Perusal of record shows that the above suit is for a bare injunction and necessity for appointment of advocate commissioner that too for noting down the physical features of the suit property does not arise and such exercise is not going to help the court in any manner. Even the learned judge has not stated in the order that there has been any insufficient evidence or doubtful evidence available on record which necessitated in allowing the petition for appointment of advocate commissioner and it is also not stated in what way appointment of commissioner would help the court to decide the issue in a bare injunction suit. The contention of the petitioners that the advocate commissioner has not visited the property till date is also not disputed by the



respondents 1 and 2 and that the advocate commissioner cannot be appointed to collect the evidence in the appeal stage. Therefore, I am inclined to interfere with the impugned order passed by the learned Judge. Accordingly, the impugned order dated 08.04.2014 passed by the learned Subordinate Judge, Kovilpatti, in I.A.No.82 of 2013 in A.S.No.44 of 2012, is set aside and this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar (T&P)

/True copy/

Sub Assistant Registrar

To

The Subordinate Judge,
Kovilpatti.

+1cc to Mr.E.V.N.Siva, Advocate, SR.No. 62049

+1cc to Mr.R.Devaraj, Advocate, SR.No. 62129

CRP (NPD) (MD) No.1492 of 2014
17.04.2018

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