



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 06.09.2018

DELIVERED ON : 28.09.2018

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) No. 980 of 2015

and

M.P. (MD) No. 1 of 2015

1. P. Ponnayyan
2. Rosamma
3. Dharmaraj

.. Petitioners/Petitioners/Plaintiffs

Vs.

1. Sunil Kumar
2. Sathiyaraj
3. Anil Kumar
4. Kinil Kumar
5. Shiju
6. Anoop
7. Rajesh
8. Kalaas
9. Robert Brooz
10. Eliyas
11. Jasmine

.. Respondents/Respondents/Defendants

(Respondents 2, 5 and 8 are given up since they remained exparte)

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 19.11.2014 passed in I.A.No.444 of 2014 in O.S.No.155 of 2014 on the file of the Sub ordinate Judge, Kuzhithurai Camp.

For Petitioner : Mr.M.R.Sreenivasan

For Respondents 1, 3, 4 and 9 : Mr.K.N.Thambi

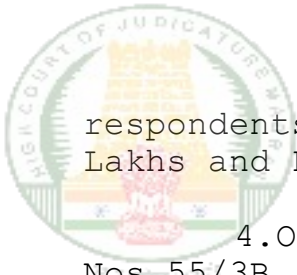
For Respondents 6, 7, 10 and 11: No Appearance

For Respondents 2, 5 and 8 : Given up vide E.P. And batta

ORDER

Heard the learned counsel on either side.

2. This petition has been filed to set aside the fair and decretal order dated 19.11.2014 passed in I.A.No.444 of 2014 in O.S.No.155 of 2014 on the file of the Sub ordinate Judge, Kuzhithurai Camp.



respondents claiming damage amount of Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) with 12% interest.

4. On the side of the petitioners, it is stated that Survey Nos.55/3B and 20/25 in Adakkakuzhi Village was in possession of the petitioners as per the final decree in O.S.No.55 of 1977 and the petitioners erected stone pillars on four sides and laid wire fencing. On 15.08.2014, when the petitioners were out of station, the respondents trespassed into the suit item 1 and 2 properties and caused damages and committed theft of stone pillars and the wire fencing. Thereby, the petitioners was put into loss of Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) and a complaint was lodged before the Kolankode Police Station in Crime No.194 of 2014. On 24.08.2014, the respondents 10 and 11 with five henchmen trespassed into the third item of suit property and caused damages and committed theft of wire fencing and thereby causing a damage to the tune of Rs.50,000/- (Rupees Fifty Thousand only). The petitioners filed a suit and the appointment of an Advocate Commissioner is necessary to note down the damages caused to the suit property.

5. On the side of the respondents 1, 3, 4 and 9, it is stated that the petitioners are not having any right over the suit properties. No document is filed to prove the title or possession. No such incidents of causing damage took place and a false complaint was lodged by the petitioners. The petitioners have stated that they were given possession as per the Judgment passed in O.S.No.55 of 1977 on 15.07.2014. The property was not measured and no such possession was handed over. O.S.No.55 of 1977 is decreed against dead persons and the decree cannot be executed. The stand of the petitioners is that there is no possibility of assessing the damages by way of appointment of an Advocate Commissioner. There is no representation for the respondents 10 and 11.

6. On the side of the petitioners, it is stated that to assess the damages, the appointment of the Advocate Commissioner is the only possible remedy. The suit is filed for claiming damages and the damages is to be proved. In support of their contention, The Judgment passed by this Court in the case of *R.Chinthamani and another v. C.Samiappan* reported in 2010 (1) T.N.C.J. 156(Mad) is cited.

7. On the side of the respondents 1, 3, 4 and 9, it is stated that the final decree was passed in O.S.No.55 of 1977 against several dead persons. E.P.No.53 of 2014 is filed against dead persons. It is stated that though the property was said to have been delivered on 15.07.2014 but only paper delivery is given to the petitioners and actual possession is with the respondents. This petition is filed 1 ½ years after the alleged date of occurrence.



Petitions were heard and reserved for Judgment. Though the petitioners filed two C.R.P.s in the year 2015, there was no petition for appointment of the Advocate Commissioner.

9. In support of their contention, the Judgments passed of this Court in the case of *T.K. Krishnamurthy v. Tamil Nadu Water and Drainage Board* reported in 2006(5) CTC 178 (Mad), in the case of *Muthusamy Gounder v. Mylsamy Gounder* reported in 2006(5) CTC 433 (Mad) and in the case of *Rangasamy v. The Superintending Engineer, Tamil Nadu Electricity Board* reported in 2006(5) CTC 501 (Mad) are cited.

10. On the side of the respondents 1, 3, 4 and 9, it is stated that there is no purpose in inspecting the properties to note down the physical features. Even a photograph is sufficient to prove the physical features. A Commissioner cannot be appointed to gather evidence on the side of the petitioners and prayed to dismiss the petition.

11. Records perused. From the records, it is clear that there is no dispute regarding the measurement of the land. The Commissioner cannot be appointed for gathering evidence. There is no dispute regarding the identity and the physical features of the suit properties. The occurrence is alleged to have taken place before 1 ½ years from the date of the suit in O.S.No.155 of 2014 that is approximately 6 years ago. The allegation is that the respondents have taken away the wire fencing. As the wire fence was alleged to have been taken away, the Commissioner cannot assess the value of the fencing which are not available on the spot.

12. In the above circumstances, the appointment of a Commissioner to assess the damage will cause further delay in the proceedings which is pending from 2014. Hence, this Civil Revision Petition is dismissed. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/
Assistant Registrar(Crl Side)

/True copy/

Sub Assistant Registrar(CS-I)

To
The Sub ordinate Judge, Kuzhithurai Camp.
+1cc to Mr.R.NANDAKUMAR, Advocate, SR.No.87678
+1cc to Mr.K.N.THAMPI, Advocate, SR.No. 87785

C.R.P. (PD) (MD) No.980 of 2015
28.09.2018