



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2018

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

C.R.P. (MD) (NPD) No. 709 of 2017

and

C.M.P. (MD) No. 3193 of 2017

1. Yesudhas
2. Rajaretnam
3. Mariyal
4. Albert Neehar
5. Anto

... Petitioners/Appellant/petitioner

/Vs./

Rethinasigamony

... Respondent/Respondent/Respondent

Prayer: Civil Revision Petition - filed under Article 227 of the Constitution of India, to set aside the decretal order dated 27.04.2016 made in I.A.No.25 of 2015 in A.S.No.31 of 2013 on the file of the learned Subordinate Judge, Kuzhithurai.

For Petitioners

: Mr.K.N.Thampi

For Respondent

: Mr.P.Thiyagarajan

ORDER

The plaintiffs in O.S.No.24 of 2010 on the file of the District Munsif Court, Kuzhithurai are the revision petitioners herein. It was a suit for declaration and permanent injunction. The suit was dismissed. Questioning the same, A.S.No.31 of 2013 was filed before the Sub Court, Kuzhithurai. In the first appeal, the plaintiffs filed I.A.No.25 of 2015 for appointment of an Advocate Commissioner. The Court below by order impugned in this civil revision petition dismissed the said IA. Challenging the same, this civil revision petition has been filed.

2. Heard the learned counsel on either side.

3. The learned counsel appearing for the revision petitioners submitted that power / jurisdiction of the appellate Court to appoint an Advocate Commissioner for the purpose of elucidating the disputed matter has not been borne in mind by the First Appellate Court. He pointed out that in this case the dispute is with regard to the extent.

4. According to the revision petitioners, they are entitled to 10 ½ cents of the land. But the defendants admit and concede that the plaintiffs are entitled to 10 ½ cents of the land. Therefore, there is a dispute with regard to the identity as to where the



remaining 4 cents is located. Therefore, it is necessary to appoint an Advocate Commissioner for elucidating this issue.

5. I am unable to agree with the submissions of the learned counsel appearing for the revision petitioners for more reasons than one.

6. The plaintiffs were clear as to what was the stand of the defendants the moment when they filed their written statement. The suit was filed wayback in January 2010. The written statement was filed in August 2010. The suit was concluded only in February 2013. The revision petitioners had full two years of time for taking out such application before the trial Court itself. There is no explanation whatsoever for not taking re-course to this exercise at the trial stage. That apart, the revision petitioners want an Advocate Commissioner to be appointed for marking the demarcated line of the property of the plaintiffs from that of the defendants as per partition deed dated 12.02.1957. The suit is not one for demarcation. It is for permanent injunction.

7. In any event, the Court below has chosen to dismiss the IA filed by the revision petitioners. Acting under Article 227 of the Constitution of India, I do not deem it fit to interfere with the order passed by the Court below. I do not find any merit in this civil revision petition. Accordingly, this civil revision petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (cs-III)

// True Copy //

Sub Assistant Registrar (CS-IV)

To

The Subordinate Judge, Kuzhithurai.

+1 CC To MR.K.N.THAMPI, Advocate SR. NO.88654

+3 CC To MR.P.THIAGARAJAN, Advocate SR. NO. 88229

Order made in
C.R.P. (MD) (NPD) No.709 of 2017

SM

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