



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2018

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (PD) (MD) No.1959 of 2018

and

C.M.P. (MD) No.8620 of 2018

Britto Komasa (Died)

1.Savithiri

2.Jonny Pert

... Petitioners/Petitioners/Defendants

Vs.

T.Moses

... Respondent/Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 11.07.2018 passed in I.A.No.237 of 2018 in O.S.No.177 of 2011 on the file of the Sub Court, Thoothukudi.

For Petitioners : Mr.G.Prabhu Rajadurai

For Respondent /

Caveator : Mr.H.Arumugam

ORDER

The defendants in the suit in O.S.No.177 of 2011 on the file of the Sub Court, Thoothukudi, are the revision petitioners herein. It is a suit for specific performance. The defendants filed I.A.No.237 of 2018 for appointment of Advocate Commissioner to note the existence of a 10 feet Pathway and a Gate. The Court below dismissed the said interlocutory application on the ground that this is a suit for specific performance and that therefore, appointment of Advocate Commissioner is wholly unnecessary. The said order is questioned in this civil revision petition.

2. Heard the learned Counsel on either side.

3. The learned Counsel for the revision petitioners reiterated the contentions set out in the memorandum of grounds.

4. The plaintiff and the original defendant, namely, Britto Komasa, had entered into a sale agreement. The original defendant, however, did not come forward to execute the sale deed. That necessitated the filing of O.S.No.177 of 2011 for specific performance. The stand of the defendant was that since the agreement did not duly reflect the original understanding between the parties, he was not ready to execute the sale deed. His stand was that the parties had originally agreed to leave out the 10 feet Pathway and the Gate. But then in the agreement, the said portion was also



included. This was the bone of contention between the parties. The original defendant, in the meantime, passed away and the suit is now being contested by the revision petitioners herein.

5. In the written submission itself, there is a clear reference to the said 10 feet Pathway and the Gate. There is no replication filed by the plaintiff controverting their existence. Since there is no dispute with regard to the existence of the 10 feet Pathway and the Gate, there is absolutely no need for appointing an Advocate Commissioner. Whether the defendants are justified in not executing the sale deed on this ground is a matter for trial in the main suit. This Court has not gone into the tenability or sustainability of the said defence. All that this Court holds is that inasmuch as there is no dispute with regard to the existence of the 10 feet Pathway and Gate, there is no need to appoint an Advocate Commissioner.

6. With these observations, the order impugned in the civil revision petition is sustained and this civil revision petition is accordingly disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Subordinate Judge,
Thoothukudi.

Copy To:

The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. **(2 copies)**

- 1 CC TO Mr.G.Prabhu Rajadurai , ADVOCATE IN SR No.83905.
- 1 CC TO Mr.H.Arumugam , ADVOCATE IN SR No.84183.

GK

- DS SV SAR-1 16.10.2018 2P/6C

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