



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.01.2018

CORAM :

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

WEB COPY

C.R.P. (MD) No.1194 of 2011 (NPD)

- 1.Sabura Beevi
- 2.Mohammed Kasim
- 3.Rafia Beevi
- 4.Mariya Ayisha
- 5.Kadhar Beevi
- 6.Nashrudeen
- 7.Jahir Hussin
- 8.Sahul Hameed
- 9.Yasmin Banu

... Petitioners/Petitioners/
Appellants

Vs.

- 1.Arulanandam
- 2.Anthoni Madhavadiyan
- 3.Anthonisamy Nathan

... Respondents/Respondents
Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, to set aside the Fair and Decreetal order dated 24.03.2011 passed in I.A.No.30 of 2011 in A.S No.42 of 2010 on the file of Subordinate Judge, Kovilpatti and allow the present Civil Revision Petition.

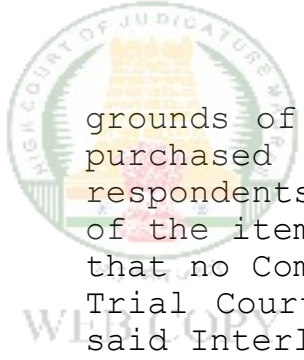
For Petitioners : Mr.M.R.Sreenivasan
For Respondents : Mr.G.Prabhu Rajadurai

ORDER

This Civil Revision Petition has been filed to set aside the Fair and Decreetal order dated 24.03.2011 passed in I.A.No.30 of 2011 in A.S No.42 of 2010 on the file of Subordinate Judge, Kovilpatti.

2.The argument advanced by the revision petitioners herein is that they filed an application for appointment of Commissioner to inspect the plaint scheduled property. According to the revision petitioners, they have been enjoying the property from 17.05.1958 and the respondents are trying to engage in the vacant site on 12.06.2007. It is also observed from the arguments that in the suit property there are two houses, a vacant site and Punja land.

3.The argument of the petitioners is also that they are in possession and enjoyment of the vacant site and Punja land. In The



grounds of appeal, the petitioners have made an averment that they purchased the property as earlier as in the year 1958 and the respondents are attempting to disturb their possession. Since, one of the items is vacant site, it is clarified by the learned counsel that no Commissioner was appointed during the proceedings before the Trial Court and only in the appeal the petitioners have filed the said Interlocutory Application.

4.The learned counsel for the respondents would submit that the First Appellate Court has rightly dismissed the application filed for Appointment of Commissioner and he prays for dismissal of this Civil Revision Petition.

5.Heard the learned counsel for the petitioners and the learned counsel for the respondents and perused the materials available on record.

6.In the grounds of appeal, the petitioners have stated that the application for appointment of Commissioner has been filed only to note down the specific features of the plaint schedule property. The Trial Court, after verifying the purpose for filing the Commissioner application and also the counter statement filed by the respondents, found that there is no specific purpose pointed out by the petitioner for appointment of Commissioner and it is found that when the contention of the petitioners is that they are in possession and enjoyment of the suit property, the Appointment of Commissioner to inspect the suit property is not a fair one and it is for the petitioner to prove their possession, title and enjoyment by way of document and evidence and not based on the Commissioner's report.

7.On perusal of the averments made in the ground of appeal and upon hearing the arguments of both sides, it is seen that the petitioners have not filed any application before the Trial Court for that purpose and there is no fair ground stated by the petitioners before the First Appellate Court for filing an application to note down the physical features and in what way it would help for deciding the issues in the suit.

8.Considering all these facts, this Court is of the opinion that no interference is required in the order passed by the First Appellate Court.

9.In the result, this Civil Revision Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS-III)

/True Copy/



To

1.The Subordinate Judge,
Kovilpatti

2.The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.G.Prabhu Rajadurai, Advocate SR.No. 43499

C.R.P. (MD) No.1194 of 2011 (NPD)

DSS

JM/SV MMS/SAR 1/26.03.2018/3P/5C