

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2019

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

CRP NPD No.1697 of 2011 and
M.P.No.1 of 2011

1. Shanmugam
2. Renganathan
3. Rasappan
4. Kandhasamy
5. Palaniappan
6. Samudhayam @ Karuppannan
7. Karupannan Petitioners

Vs.

1. Chinnusamy (died)
2. Venkatachalapathy
3. Thangavelu Respondents

Prayer : Civil Revision Petition filed under Section 227 of the Constitution of India against the orders dated 22.07.2010 passed in REP No.10 of 2008 in O.S.No.194 of 1995 by the District Munsif Cum Judicial Magistrate, Paramthy.

For Revision Petitioners : M/s S.Umamaheswari

For Respondents 2 and 3 : M/s P.Valliappan

ORDER

Aggrieved over the orders passed by the trial court, dismissing application filed for appointment of advocate commissioner, the present revision petition has been filed.

2. The revision petitioners are the defendant in O.S.No.194 of 1995 and plaintiffs have filed the said suit for permanent injunction against the revision petitioners. The said suit was decreed infavour of the plaintiffs. Subsequently, the plaintiffs have filed R.E.P.No.10 of 2008 before the execution court to arrest the revision petitioners, on the ground that they have violated the terms of decree and judgment. Pending execution proceedings, the revision petitioners/ defendants have filed a petition to appoint an advocate commissioner to note down the physical features of the property. The said application was opposed by the respondents/plaintiffs. The trial court dismissed the said application holding that since the suit property is a fallow land, appointment of advocate commissioner is not necessary. Against which this revision petition has been filed.

2. The learned counsel appearing for the revision petitioners would contend that appointment of advocate commissioner is necessary to note down whether the lands are agriculture lands or not and hence the order of the trial court dismissing the application, has to be set aside.

3. The learned counsel appearing for the respondents would contend that the commissioner report about the physical features of the property is not at all necessary, since the only issue to be decided is whether there is any violation of decree and judgment and hence, he prayed for dismissal of the revision.

4. I have perused the entire order. The subject matter of the land is a fallow land. Therefore, the question arises to be decided by the execution court is whether the defendants/respondents have violated the terms of decree and judgment and that fact has to be proved independently in the execution court. The revision petitioners wanted to gather evidence by way of appointing commissioner to find out the nature of the suit property. Once the decree holder has obtained decree, whether the respondents are doing any agriculture

work in the suit property or not is immaterial. The only issue to be decided is whether there is any violation of decree and judgment. Therefore, I do not find any error or illegality in the orders passed by the trial court and the same does not warrant any interference by this court.

5. In the result,

(i) The Civil Revision Petition is dismissed. No costs. The connected civil miscellaneous petition is closed.

(ii) The orders passed by the trial court is confirmed.

(iii) The execution court is directed to dispose the R.E.P.No.10 of 2008 within a period of 6 months from the date of receipt of a copy of this order.

15.03.2019

Index : yes/no

Internet : yes/no

Speaking order/non-speaking order
mst

To

The District Munsif Cum Judicial Magistrate, Paramthy.

N.SATHISH KUMAR. J.,
mst



**CRP NPD No.1697 of 2011 and
M.P.No.1 of 2011**

WEB COPY

15.03.2019