



9IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05..12..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.2955 of 2015

and

M.P.No.1 of 2015

1.D.Deepa
2.Minor K.Kaviya
3.Minor M.Vedhavalli

... Petitioners /Plaintiff

-Versus-

1.K.Murugesan
2.K.Ravi
3.P. Kannan Mandiri
4.K. Kalliyammal

... Respondents

Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decretal order dated 17.03.2015 made in I.A.No.1337 of 2014 in O.S.No.218 of 2014 by the learned Additional District Munsif, Vellore, Vellore District.

For Petitioners : Mr.P.Chandrasekar

For Respondents : No Appearance

ORDER

This civil revision petition is directed against the order of the learned Additional District Munsif, Vellore, refusing to issue a warrant of commission to an Advocate Commissioner to inspect the plaint schedule properties, note down the physical features with the assistant of the Village Administrative Officer and to ascertain the age of the building standing on the property in question with the help of a qualified Engineer.

2. The petitioners are the plaintiffs in O.S.No.218 of 2014 and the respondents are defendants. The suit has been filed for declaration of title over suit schedule properties in favour of the plaintiffs 2 and 3 and for a consequential injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the properties by the plaintiffs. Pending suit, the plaintiffs filed an application



for appointment of advocate commission to note down the physical features in the suit properties and to find out the age of the building standing thereon. That application was dismissed by the trial court. Aggrieved by the same, the plaintiffs have come up with this revision petition.

3. Even though respondents were served with notice and their name have been printed in the cause list, they have not chosen to appear either in person or through a counsel.

4. I have heard the learned counsel for the petitioners and also perused the records carefully.

5. The suit is one for declaration of title and for consequential injunction. In a suit for declaration of title, the burden is on the plaintiffs to establish their title. They cannot make an attempt to collect evidence through an Advocate Commissioner by noting down the physical features of the suit properties and the age of the building thereon. If at all the petitioners have got any valid material evidence to prove their title, it is always open to them to establish the same before the trial court in the manner known to law. The application for appointment of Advocate Commissioner came to be filed mainly on the ground that the defendants have contended that the suit property is a vacant site and there is no building as such in the suit properties. The trial court dismissed the application holding that if at all the petitioners wanted to establish their title and possession, it is always open to them to prove the same by independent oral and documentary evidence and they cannot seek to achieve object of collection of evidence through the Advocate Commissioner to establish their title and possession. The trial court has rightly approached the issue and dismissed the application. Thus, this court does not find any illegality or irregularity in the order passed by the trial court and hence, the revision petition fails.

In the result, this Civil Revision Petition is dismissed. No cost. Consequently, connected MP is closed. However, since the suit has been pending from the year 2004, the trial court is directed to proceed with the suit and dispose of the same within three months from the date of receipt of a copy of this order.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar



kmk

To

1.The Additional District Munsif, Vellore, Vellore District.

+1 CC to Mr.P.Chandrasekar, Advocate sr 101700.

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VGII (CO)
SP(06/03/2020)