

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (PD) No.3639 of 2013 &

M.P.No.1 of 2013

1. Mrs.Selvi
2. Mr.Prabusankar
3. Mrs.Saranyadevi

.. Petitioners

Vs.

1. Minor Gokul
2. Minor Gowsik
Children of P.Kannan,
Rep. By their next friend and mother
3. Mr.Ganesan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India against the Order passed in I.A.No.376 of 2012 in O.S.No.339 of 2010 dated 01.03.2013 on the file of the Principal District Munsif, Tiruchengode.

For Petitioners : Mr.V.S.Kesavan

For Respondents : Mr.N.Manoharan – R1 & R2

No appearance - R3

ORDER

Aggrieved over the dismissal of the Order passed by the trial Court in an application filed for appointment of a Commissioner to inspect the suit property to locate the survey No.21/2 and measure the same and locate the suit S.No.21/2 and to note down all the trees and buildings and bore wells and to note down other physical features, the present revision came to be filed.

2. The learned counsel appearing for the revision petitioner would contend that he has already filed a suit in O.S.No.566 of 2008 for partition of properties owned by the first defendant. However, one Palaniappan and others had obtained a decree previously against the first defendant. According to the revision petitioner, they are in possession of the suit property. Now, a third party right has been created and the plaintiff had filed an application seeking appointment of an Advocate Commissioner as it is absolutely necessary in this case.

3. The learned counsel for the respondent submitted that the suit has been filed based on the title itself and possession of the plaintiff. The Partition suit is no way connected with the suit property and the revision petitioner is trying to collect evidence through the Commissioner, which is not permissible. Admittedly, the trial Court has already granted interim injunction as against the

revision petitioner. The suit property is only a cultivable land and the possession of the land by the plaintiff has to be established by the documentary evidence.

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

5. The prayer sought in the application for appointment of Advocate Commissioner clearly indicate that the Commissioner sought to be appointed not only to note down the physical features but also to locate the survey number and identify the area and count the tress, bore well etc. The very nature of the relief sought in the application clearly indicate that by appointing a Commissioner, the revision petitioner is trying to gather evidence to substantiate the alleged possession. If such a plea is allowed, the same will amount to gathering of evidence by the Court itself. It is their contention that they are in continuous possession of the suit property ever since the marriage of the first petitioner. That being the position, the possession has to be established by documentary as well as oral evidence and not by way of collecting evidence through a Commissioner. Hence, this Court does not find any error in the Order passed by the trial Court and this revision is liable to be dismissed.

6. Accordingly, this revision is dismissed and the Order of the trial Court is confirmed. Further, the trial Court is directed to dispose of the suit within a

period of four months from the date of receipt of a copy of this Order.

Consequently, the connected miscellaneous petition is closed. No cost.

15.02.2019

vrc

To

The Principal District Munsif,
Tiruchengode.



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N.SATHISH KUMAR, J.

vrc



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