

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.R.P.No.2841 of 2016

and

C.M.P.No.14411 of 2016

1. Vellachi
2. Ramakrishnan .. Petitioners / Plaintiffs

Vs.

1. K.Ramasamy
2. K.Rajendran
3. Palani
4. Ponnusamy
5. Siddhayee
6. Sinthamani .. Respondents / Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 02.11.2015, passed in I.A.No.302 of 2015 in O.S.No.1397 of 2007 on the file of the learned II Additional District Munsif, Salem.

For Petitioners : Mr.R.Nalliyappan

For Respondents : Mr.J.Ramakrishnan

- - - - -

O R D E R

This revision is directed against the order passed by the Court below dismissing the petitioners' application filed under Order XXVI Rule 9 read with Section 151 of C.P.C., for appointment of Advocate Commissioner to note down the physical features of the suit property.

2. The petitioners/plaintiffs filed a suit in O.S.No.1397 of 2007, on the file of the learned II Additional District Munsif, Salem, seeking a declaration to declare the right and title to the suit property in favour of the petitioners and consequently restrain the respondents from interfering with their peaceful possession and enjoyment of the suit property. The first respondent herein has filed a suit in O.S.No.1274 of 2008,

seeking a permanent injunction restraining the petitioners herein from interfering with the suit property. A joint trial has been ordered in both the suits.

3. Earlier, the petitioners filed a similar application in I.A.No.50 of 2014 in O.S.No.1274 of 2008, seeking appointment of Advocate Commissioner to note down the physical features and also to count the standing trees and find out the age of the trees standing in the suit property. The said application came to be dismissed by the Trial Court vide order dated 25.03.2014, on the ground that the application is totally unnecessary and it will not in any way help the parties in deciding the issue.

4. Thereafter, trial commenced and when P.W.1 was in the box, petitioners' filed another application in the suit filed by them in O.S.No.1397 of 2007 to appoint an Advocate Commissioner for the very same purpose. The said application was dismissed by the trial Court vide order dated 02.11.2015. Now, challenging the said dismissal order, present revision has been filed.

5. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents and also perused the records carefully.

6. The learned counsel appearing for the petitioners would contend that the defendants purchased the suit property by means of a registered sale deed, wherein, in the recitals, it is stated as a vacant site, whereas, the petitioners claim over the property is by way of partition. According to the petitioners, in the suit property there are number of standing trees, however, the sale deed, upon which the respondents claim their title, it is mentioned that it is only a vacant land. Therefore, in order to find out whether any standing trees are there or not, the petitioners filed the present application for appointment of an Advocate Commissioner.

7. The learned counsel appearing for the petitioners further submitted that the earlier application was dismissed on the ground that the application has been filed in a suit for injunction and the petitioners cannot file such an application in an injunction suit. However the present application has been filed in a suit for declaration and therefore, there is no bar in filing the said application again.

8. Per contra, the learned counsel appearing for the respondents submitted that as two suits were filed for the very same property, joint trial of both the suits were ordered and that on an earlier occasion when the petitioners came up with a similar application for appointment of Advocate Commissioner, the same was dismissed by the trial Court and the petitioners

have chosen not to challenge the same and now after the commencement of the trial, the present application has been filed only with an intention to delay the trial. Learned counsel further submitted that even if an Advocate Commissioner is appointed, no purpose will be served.

9. Earlier application filed by the petitioners' for appointment of Advocate Commissioner for the very same purpose has been dismissed by the trial Court on the ground that appointing an Advocate Commissioner is totally unnecessary and no purpose will be served by noting down the physical features. Now, after the commencement of the trial, the petitioners have come out with the present application for the very same purpose to note down the physical features of the suit property. Petitioners' suit is for title and it is for them to prove their title by admissible evidence, noting down of the physical features of the suit property will in no way support the case of the petitioners. That apart, the earlier application with a similar prayer was dismissed by the trial Court and the same has become final. Now, the petitioners have started another round of litigation for the very same relief. The trial Court considered all these aspects and dismissed the present application. This Court does not find any illegality or irregularity in the same as the trial Court has rightly dismissed the application. There is no merit in the revision and the same is liable to be dismissed.

10. In the result, the civil revision petition is dismissed and the order and final order of the Court below, impugned in this revision petition, are hereby confirmed. Considering the fact that the suit is pending since 2007, the Trial Court is directed to dispose of the said suit within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

kk

To

The II Additional District Munsif Court,
Salem.

+1CC to Mr.R.Nalliyappan (SR.No.103064)
+1CC to Mr.J.Ramakrishnan (SR.No.103175)

C.R.P.No.2841 of 2016 and
C.M.P.No.14411 of 2016

RV (CO)
BRI (20/05/2020)