

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD) Nos. 3456 of 2019

and

C.M.P. No. 22740 of 2019

1. Panjalai

2. P. Raji Naicker

... Petitioners

-Vs-

S. Jothi

... Respondent

Prayer : Petition filed under Article 227 of Constitution of India against the order dated 15.09.2017 passed in I.A. No. 143 of 2017 in O.S. No. 137 of 2013 on the file of the Sub-Court, Cheyyar.

For Petitioners : Mr. S. Makesh

ORDER

सत्यमेव जयते

This Civil Revision Petition has been filed against the fair and decretal order passed in I.A. No. 143 of 2017 in O.S. No. 137 of 2013 by the Sub-Court, Cheyyar, Tiruvannamalai District, by order dated 15.09.2017.

2. Before the trial Court, a suit was laid by the respondent / plaintiff for declaration and recovery of possession of the suit property, where the defendants filed the present IA i.e., I.A. No. 143 of 2017 under Order XXVI Rule 9 of the Civil Procedure Code, to appoint an Advocate Commissioner with a task to visit the suit property and have an enquiry with a village people in the locality and file a report to that effect, as to who is in possession of the suit property.

3. The said application having been heard and considered, was rejected by the Court below, as against which, the present revision petition has been filed.

4. I have heard the learned counsel appearing for the revision petitioners, who would submit that, actually these defendants entered into an agreement with the original owner who purchased the property, for which, a considerable sale consideration already has been made as a part sale consideration and an agreement to that effect has been entered between them and accordingly, these revision petitioners / defendants have been brought in to possession by the original owner in

the suit property. However without honoring the said sale agreement, the owner of the property executed the sale deed and sold the property to and in favour of the plaintiff and therefore, after having obtained the property, which is unlawful, according to these revision petitioners, the respondent / plaintiff laid the said suit for declaration of title and to have possession of the property which shows that, the petitioners themselves are already in the possession of the property.

5. Be that as it may, what has been stated by the learned counsel in support of his objection before the Court below as well as here in this revision, is no way connected with the merits of the issue raised in this revision, because, it is an admitted fact that the suit for title was filed by the respondent / plaintiff, where neither the plaintiff nor the defendants can gather any evidence by seeking appointment of Advocate Commissioner as the Advocate Commissioner, assuming if is appointed and filed a report with the physical features of the property in question, that would not any way be helpful either to the plaintiff or to the defendants to resolve the issue raised in the suit, which is nothing but for ownership / title of the property.

R. SURESH KUMAR, J.

vji / kmm

6. In view of the aforesaid discussion, this Court feels that, there is absolutely no infirmity in the decision taken by the Court below in rejecting the application through the impugned order.

7. In that view of the matter, this Civil Revision Petition fails and hence it is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

24.10.2019

Index: Yes / No

Speaking order / Non speaking order

vji / kmm

To

The Sub-Court,
Cheyyar.

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